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In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, ET AL., PETITIONERS

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

QUESTIONS PRESENTED

1. Whether federal officials are absolutely immune from personal damages liability for their decision not to initiate administrative action to terminate federal funding to local government agencies that allegedly engage in discriminatory personnel practices.

2. Whether petitioners' failure to terminate federal funding to local government agencies that allegedly discriminate on the basis of race and gender gives rise to a cause of action for damages under the Fifth Amendment.

3. Whether petitioners are entitled to qualified immunity as a matter of law.

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* The other parties to this case are petitioners Edward H. Levi, Charles R. Work, and Herbert C. Rice, and respondents Penelope Brace, Bruce Bailey, Kristen Heemstra, Ollie S. Glover, Joel Michelle Schumacher, Raymond Clark, Kent G. McKinney, Penny Orazetti, Roberta Ledyard, Robert Booth, William Harris, and Jennie McKinney.

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The Solicitor General, on behalf of Richard W. Velde, Edward H. Levi, Charles R. Work, and Herbert C. Rice, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-23a) is reported at 631 F.2d 784. The opinion of the district court (App. E, *infra*, 28a-29a) is not reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 24a-25a) was entered on May 14, 1980. A petition for rehearing was denied on August 1, 1980 (App. D, *infra*, 27a). On October 21, 1980, the Chief Justice extended the time within which to file a petition for a writ of certiorari to December 29, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

2. Section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 206, as reenacted by Section 2 of Pub. L. No. 93-83,

87 Stat. 211, codified at 42 U.S.C. (1970 ed., Supp. V) 3757, provided:

> Whenever the Administration, after reasonable notice and opportunity for hearing to an applicant or a grantee under this chapter, finds that, with respect to any payments made or to be made under this chapter, there is a substantial failure to comply with—
>
> (a) the provisions of this chapter;
>
> (b) regulations promulgated by the Administration under this chapter; or
>
> (c) a plan or application submitted in accordance with the provisions of this chapter;
>
> the Administration shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure.

3. Section 518(c) of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 208, as amended by Section 2 of Pub. L. No. 93-83, 87 Stat. 214, codified at 42 U.S.C. (1970 ed., Supp. V) 3766(c), provided:

> (1) No person in any State shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.
>
> (2) Whenever the Administration determines that a State government or any unit of general local government has failed to comply with para-

graph (1) of this subsection or an applicable regulation, it shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration shall exercise the powers and functions provided in section 3757 of this title, and is authorized concurrently with such exercise—

(A) to institute an appropriate civil action;

(B) to exercise the powers and functions pursuant to title VI of the Civil Rights Act of 1964 (section 2000d of this title); or

(C) to take such other action as may be provided by law.

(3) Whenever the Attorney General has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

STATEMENT

1. In 1968, Congress created the Law Enforcement Assistance Administration ("LEAA") in order to provide technical and financial assistance to local and state police departments. See Title I of the Omnibus Crime Control and Safe Streets Act of 1968 ("the Act"), Pub. L. No. 90-351, 82 Stat. 197-209, codified at 42 U.S.C. 3701 *et seq.*[1] The Act authorizes the

[1] In 1979, Congress restructured LEAA, creating a National Institute of Justice, a Bureau of Justice Statistics and

Administrator to make financial grants to state and local agencies in order to establish state and regional law enforcement planning agencies, to develop and acquire law enforcement equipment and methods, and to recruit and train law enforcement personnel. See 42 U.S.C. 3722-3725, 3731-3750. Pursuant to these provisions, LEAA distributed approximately $7.25 billion in federal funds to state and local agencies between 1969 and 1979. Such funds represent only a small percentage of the operating budget of any recipient police department.[2]

Section 518(c)(1) of the Act prohibits any recipient of LEAA funds from discriminating on the basis of "race, color, national origin, or sex." 42 U.S.C. (1970 ed., Supp. V) 3766(c)(1). At all times relevant to this litigation, Section 518(c)(2) provided that upon determining that a recipient of funds is discriminating or otherwise failing to comply with LEAA's regulations, LEAA "shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance." 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2).[3] Section

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an Office of Justice Assistance, Research, and Statistics. See Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167. These changes do not affect the legal issues presented by this case.

[2] For example, in 1974, the Philadelphia Police Department, which is discussed in respondent's complaint (C.A. App. 19-21), received a total of less than $800,000 in LEAA grants. The Department's total budget that year was almost $132 million. Thus, LEAA's grants accounted for approximately 0.6% of the 1974 Philadelphia Police Department's budget. ("C.A. App." refers to the appendix filed in the court of appeals.)

[3] In 1976, Section 518 was substantially amended. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122(b), 90 Stat. 2418. See also page 16, *infra*.

518(c)(2) further stated that "[i]f within a reasonable time" LEAA cannot secure voluntary compliance, it "shall exercise the powers and functions provided in section [509]." 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2).[4] Section 509, in turn, provided that if, after notice and an opportunity for a hearing, LEAA finds that "there is a substantial failure to comply," it "shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure." 42 U.S.C. (1970 ed., Supp. V) 3757.[5]

2. In 1975, respondents, six blacks and six women and an organization that represents black police officers, filed this suit in the United States District Court for the District of Columbia, challenging LEAA's funding of state and local police departments that allegedly discriminate on the basis of race and gender. Named as defendants were the Department of Justice, LEAA, and four Department of Justice officials ("petitioners"), Attorney General Edward H. Levi, LEAA Administrator Richard W. Velde, LEAA Deputy Administrator Charles R. Work, and Director of LEAA Office of Civil Rights Compliance Herbert C. Rice, who were sued in their individual and official capacities.

Respondents alleged that state and local police departments that had received and were receiving LEAA grants had discriminated against them. Respondents further claimed that petitioners' failure to terminate funding to these discriminatory agencies

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[4] Section 518(c)(2) also authorized LEAA to institute other appropriate proceedings to remedy the noncompliance.

[5] Section 509 was also amended in 1976. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122(a), 90 Stat. 2418.

in accordance with Sections 509 and 518 of the Act violated their statutory and constitutional rights by "serv[ing] to finance and thus to perpetuate the discriminatory and exclusionary employment practices of LEAA recipients" (Complaint ¶ 41(b), reprinted at C.A. App. 19). Respondents sought injunctive and declaratory relief from LEAA and the Department of Justice and $20 million in compensatory and punitive damages from petitioners.

The government moved to dismiss the case or, in the alternative, for a grant of summary judgment. In particular, petitioners contended that respondents lacked standing to challenge the refusal to terminate federal funding and that respondents' complaint failed to state a claim upon which relief could be granted. Petitioners further argued that they enjoyed official immunity with regard to respondents' claim for damages.[6] On December 8, 1976, the district court dismissed the complaint, relying on *Barr* v. *Matteo*, 360 U.S. 564 (1959). The court stated that petitioners' "challenged actions * * * clearly fall within the outer perimeter of the line of their official duties * * * [and that c]onsequently [respondents'] claims for monetary damages against the defendants in their individual capacities are barred by the doctrine of official immunity" (App. E, *infra*, 28a-29a).[7]

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[6] The government also claimed that the Crime Control Act of 1976, Pub. L. No. 94-503, Section 122, 90 Stat. 2418, had rendered respondents' claims for injunctive and declaratory relief moot. The district court agreed (App. E, *infra*, 28a-29a), but the court of appeals reversed on this point (App. A, *infra*, 3a-4a, 8a). These claims are not before this Court.

[7] The record shows that petitioners had very different roles and responsibilities regarding LEAA funding. Petitioner Levi was not involved in the day-to-day decisions regarding LEAA funding, although he did have general authority over LEAA. Moreover, several employment discrimination suits were ini-

On appeal, a divided court of appeals reversed. The court recognized that in *Butz* v. *Economou*, 438 U.S. 478, 508-517 (1978), this Court established that administrative officials who perform prosecutorial functions are absolutely immune from personal damages liability (App. A, *infra*, 5a). The court of appeals concluded, however, that petitioners "have virtually no discretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients" (*id.* at 6a). Because, in the court's view, "[t]he minimal matters left to LEAA's judgment * * * do not rise to the level of prosecutorial discretion that is protected by absolute immunity" (*ibid.*), petitioners are merely entitled to a qualified immunity with regard to their decision not to terminate LEAA funding (*id.* at 6a-7a). Declining to address petitioner's claim that in any event the record before the district court had established

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tiated against major police departments while he was Attorney General (C.A. App. 199-229). Similarly, although he delegated most responsibility for civil rights compliance to the Director of the Office of Civil Rights Compliance, petitioner Velde engaged in several attempts to secure voluntary compliance and initiated and participated in various programs designed to increase civil rights compliance and awareness among LEAA funding recipients (*id.* at 190-196, 624-720). Petitioner Work's only contact with LEAA's civil rights compliance efforts concerned his promulgation of regulations prohibiting discrimination and his role in aiding respondent Brace in her suit against the Philadelphia Police Department (*id.* at 233-235). Finally, petitioner Rice had primary responsibility for promulgating and enforcing LEAA's civil rights regulations and guidelines, and he exercised broad discretion in allocating prosecutorial resources and in choosing appropriate methods to effectuate LEAA's civil rights compliance program (*id.* at 243-245).

their entitlement to a qualified immunity, the court of appeals remanded for trial.[8]

Judge Tamm dissented on the grounds that petitioners are entitled to absolute immunity. Judge Tamm observed that the absolute immunity recognized in *Economou* for officials who initiate administrative proceedings must apply as well to those who decline to move forward with such proceedings (App. A, *infra*, 16a-17a). Otherwise, he explained, the existence of a one-sided immunity would create an unwarranted and improper bias in favor of prosecution (*ibid.*). Judge Tamm further concluded that petitioners' decisions to seek voluntary compliance rather than to initiate fund termination proceedings are "exactly what the Supreme Court had in mind when it spoke of functions 'analogous to those of a prosecutor' " (*id.* at 17a, quoting *Butz* v. *Economou*, *supra*, 438 U.S. at 515).

In addition, Judge Tamm disagreed with the majority's conclusion that petitioners lacked discretion regarding fund terminations under Sections 509 and 518 of the Act (App. A, *infra*, 17a-20a). Noting that Congress had amended those provisions in 1976 precisely because it believed that LEAA had too much discretion (*id.* at 20a), Judge Tamm pointed out that the Act required petitioners to determine (1) whether a recipient was discriminating, (2)

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[8] The court of appeals also held that respondents had sufficiently alleged standing (App. A, *infra*, 7a n.16). Judge Tamm agreed that respondents "have standing adequate to survive a motion to dismiss" (*id.* at 8a), although he expressed substantial doubt whether respondents would actually be able to prove that petitioners' conduct had caused respondents' alleged injuries or that the relief requested would redress the injuries claimed (*id.* at 8a-14a).

whether the recipient or the state was attempting to comply voluntarily within "a reasonable time," (3) whether the failure to comply was "substantial," and (4) whether a partial or complete fund termination is appropriate (*id.* at 17a-20a).

REASONS FOR GRANTING THE PETITION

This case presents important questions concerning the personal damages liability of federal officials for failing to initiate fund termination proceedings with regard to state and local agencies that allegedly discriminate in violation of federal law. The court of appeals has held that the victims of the allegedly discriminatory practices of local governments may seek substantial damages from the Attorney General and other high ranking federal officials, even though those officials did not authorize, control, supervise, or otherwise directly encourage the local agencies' allegedly discriminatory practices. As a result, petitioners may be held personally liable merely because they chose to pursue voluntary compliance or other means of redress rather than the ultimate sanction of a fund termination lawsuit.

This unprecedented ruling seriously misconstrues this Court's decision in *Butz* v. *Economou*, 438 U.S. 478 (1978), regarding the absolute immunity enjoyed by federal officials who make administrative prosecutorial determinations. Furthermore, the conclusion that federal officials may be held personally liable for failing to terminate funding to discriminatory local agencies is patently inconsistent with the decisions of this Court and the lower courts concerning constitutional causes of action. Particularly in light of this Court's directive in *Economou* that "[i]nsubstantial lawsuits" against federal officials "should not survive

a motion to dismiss" (438 U.S. at 507-508), review of the decision below is essential.

1. a. In *Butz* v. *Economou*, *supra*, the Court held that "agency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts" and that "agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment." 438 U.S. at 515-516. See also *Ferri* v. *Ackerman*, 444 U.S. 193, 202-205 (1979); *Imbler* v. *Pachtman*, 424 U.S. 409 (1976). Although *Economou* concerned an administrative decision to bring charges, the Court made clear that the same protections must apply to administrative decisions not to bring charges: just as a criminal prosecutor has absolute immunity "in deciding which suits to bring" (*Imbler* v. *Pachtman*, *supra*, 424 U.S. at 424), so too an administrative official may not be held personally liable for determining "whether a proceeding should be brought" (*Butz* v. *Economou*, *supra*, 438 U.S. at 515). In other words, an administrative official, in carrying out his supervisory responsibilities under a statute, enjoys absolute immunity from damages liability with regard to his decision not to initiate an enforcement proceeding. See also *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 426 n.24, 431 n.33; *Yaselli* v. *Goff*, 12 F.2d 396, 404-406 (2d Cir. 1926) (collecting authorities), aff'd mem., 275 U.S. 503 (1927).

As Judge Tamm pointed out in his dissenting opinion (App. A, *infra*, 16a-17a), the imposition of civil liability on an administrative official for failing to commence an enforcement proceeding would substantially eviscerate the absolute immunity for administrative prosecutors recognized in *Economou*. The de-

terminations whether or not to enforce a particular statute in a particular circumstance are inextricably interrelated aspects of the same decision-making process. Cf. *Marshall* v. *Jerrico, Inc.*, 446 U.S. 238, 249 (1980). Hence, a rule that would fully protect decisions to prosecute but would extend only qualified immunity to decisions not to prosecute would distort the exercise of prosecutorial discretion in favor of prosecution. See *Butz* v. *Economou, supra*, 438 U.S. at 515; *Imbler* v. *Pachtman, supra*, 424 U.S. at 426 n.24. Particularly in doubtful, close, or controversial cases, prosecutors would be unable to exercise their important responsibilities "free from intimidation or harassment." *Butz* v. *Economou, supra*, 438 U.S. at 516.[9]

The allegations of respondents' complaint highlight the kinds of difficult prosecutorial decisions that generally confront federal officials who are responsible for enforcing the various funding termination statutes. Respondents alleged that petitioners had relied too heavily on ineffective attempts to secure voluntary compliance and had pursued legal remedies other than the drastic measure of terminating LEAA funding. See C.A. App. 20-21, 29, 31-32.[10] In addition,

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[9] In fact, in order to avoid personal liability, a prosecutor might conceivably commence and then dismiss a lawsuit. Because those decisions are fully protected by absolute immunity (see *Imbler* v. *Pachtman, supra*, 424 U.S. at 424, quoting *Pearson* v. *Reed*, 6 Cal. App. 277, 287, 44 P.2d 592, 597 (1935)), it makes little sense to conclude that an official may be held personally liable for failing to initiate a lawsuit in the first instance.

[10] For example, the complaint alleges that petitioners made "unsuccessful efforts to achieve voluntary civil rights compliance from the Philadelphia Police Department" (¶ 47, reprinted at C.A. App. 20) and that, although petitioners

respondents asserted that petitioners had declined to investigate or initiate fund termination suits because the discrimination alleged was de minimis or uncertain in nature or because the grantee was already the subject of litigation or a court order designed to secure compliance. See *id.* at 24-29, 33-34, 49.[11]

In sum, regardless of whether petitioners were correct in their judgments on these matters, their decisions concerning the allocation of prosecutorial resources and the exercise of prosecutorial discretion are precisely the type of decision-making that the Court has sought to insulate from the intimidation and distortion that accompanies the possibility of personal damages liability. See *Butz* v. *Economou*, *supra*, 438 U.S. at 515-516; *Ferri* v. *Ackerman*, *supra*, 444 U.S. at 202-204. See also *United States* v. *Lovasco*, 431 U.S. 783, 791-795 (1977).[12] A qualified immunity,

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formally referred this matter to the Civil Rights Division of the Department of Justice for legal action, they failed to initiate funding termination proceedings (¶¶ 47-50, reprinted at C.A. App. 20-21).

[11] Prosecutors, of course, enjoy absolute immunity with regard to the decision whether or not to investigate as well as whether or not to commence formal judicial proceedings. See, *e.g.*, *Marrero* v. *City of Hialeah*, 625 F.2d 499, 505-506 n.8 (5th Cir. 1980); *Lee* v. *Williams*, 617 F.2d 320 (2d Cir. 1980); *Forsyth* v. *Kleindienst*, 599 F.2d 1203, 1212-1214 (3d Cir. 1979), petition for cert. pending, No. 79-1120. Cf. *Kipps* v. *Ewell*, 538 F.2d 564, 566 (4th Cir. 1976).

[12] We do not suggest that an administrative prosecutor's decisions are immune from judicial review altogether. In appropriate circumstances, an administrative decision may be subject to limited judicial review. See, *e.g.*, *Marshall* v. *Jerrico, Inc.*, *supra*, 446 U.S. at 249; *Cannon* v. *University of Chicago*, 441 U.S. 677, 707 n.41 (1979); *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). But such injunctive actions are a far cry from the personal damages suit presented here. See *Dennis* v. *Sparks*, No. 79-1186 (Nov. 17, 1980), slip op. 7.

which would necessitate an inquiry into the prosecutor's motivations and the intimate details of his decision-making process, would plainly "disserve the broader public interest * * * [by] prevent[ing] the vigorous and fearless performance of the prosecutor's duty * * *." *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 427.

b. The court of appeals nonetheless held that petitioners are not entitled to absolute immunity, because, in the court's view, petitioners had "virtually no discretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients" (App. A, *infra*, 6a). This is incorrect. As Judge Tamm observed (*id.* at 17a-20a), Sections 509 and 518, like numerous other statutes governing the termination of federal funding, require the exercise of substantial discretion.[13] Indeed, because the cutoff of federal funds may often cause serious dislocation and harm to innocent third parties, federal officials, including petitioners, have traditionally enjoyed broad authority to decide whether and when to initiate fund termination proceedings or to take other remedial administrative action. Cf. *Marshall* v. *Jerrico, Inc.*, *supra*, 446 U.S. at 248-249.

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[13] As indicated above, Congress amended Sections 509 and 518 in 1976, after the commencement of this suit. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122, 90 Stat. 2418; App. A, *infra*, 7a n.16, 20a-21a n.16. Those amendments do not affect the issues presented by this case. We further note that the pre-1976 versions of Sections 509 and 518 are typical funding termination provisions. See, *e.g.*, Comprehensive Employment and Training Act, 29 U.S.C. (Supp. II) 834(b), 816(c); Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1; Housing and Community Development Act of 1974, 42 U.S.C. 5309, 5311(a); Urban Mass Transit Act, 49 U.S.C. (Supp. II) 1615.

Sections 509 and 518, like other funding termination provisions (see note 13, *supra*), vest broad enforcement discretion in the appropriate LEAA officials. At a minimum, just as a prosecutor must decide whether the evidence supports a criminal charge, so too petitioners had to make an initial determination whether a recipient of LEAA funding "has failed to comply with" the nondiscrimination provision of the statute and LEAA regulations.[14] See 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2).[15] Cf. *Dunlop* v. *Bachowski*, 421 U.S. 560, 571 (1975). In addition, after notifying the grantee state's Governor of the noncompliance, petitioners had broad discretion to determine whether "within a reasonable time" the Governor or LEAA grantee had taken appropriate steps to comply voluntarily. See 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2). Moreover, because funding termination could only be predicated on a showing of "substantial" noncompliance (42 U.S.C. (1970 ed., Supp. V) 3757), petitioners could not properly commence a funding termination suit even after exhausting voluntary methods of compliance unless they believed that the evidence would show a substantial violation. Finally, Sections 509 and 518 plainly authorized petitioners to pursue various different enforcement remedies, including partial as well as

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[14] That determination ordinarily entails consideration of a complex variety of factors, including recruitment efforts, size and characteristics of the applicant pool, and legal adequacy of preselection testing procedures.

[15] Sections 509 and 518 focus on LEAA's authority and responsibilities rather than the responsibility of the individual federal officials. Petitioners as a group generally exercised this authority and responsibility although their roles in or regarding LEAA were quite different. See note 7, *supra*.

complete funding termination. See 42 U.S.C. (1970 ed., Supp. V), 3757, 3766(c)(2) & (3).

Furthermore, we submit that petitioners had discretion to decline commencement of a fund termination suit even though the evidence indicated that a grantee was engaged in substantial discrimination. To be sure, Section 518(c)(2) states that "[i]f within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration *shall* exercise the powers and functions provided in section [509]." 42 U.S.C. (1970 ed., Supp V) 3766(c)(2) (emphasis supplied). But most criminal provisions, including 28 U.S.C. 547, which provides that the United States Attorneys "*shall* * * * prosecute for all offenses against the United States," are also written in mandatory terms.[16] It is nonetheless well settled that a federal prosecutor has broad discretion, unreviewable by the judiciary, not to prosecute even if there is substantial evidence of guilt. See, *e.g.*, *United States* v. *Batchelder*, 442 U.S. 114, 124 (1979); *Bordenkircher* v. *Hayes*, 434 U.S. 357, 364 (1978); *United States* v. *Nixon*, 418 U.S. 683, 693 (1974); *Newman* v. *United States*, 382 F.2d 479, 480 (D.C. Cir. 1967) (Burger, J.); *United States* v. *Cox*, 342 F.2d 167 (5th Cir.) (en banc), cert. denied, 381 U.S. 935 (1965). Likewise, this Court has repeatedly recognized that administrative prosecutors possess similarly broad discretion notwithstanding the seemingly mandatory language of the particular statutory scheme. See, *e.g.*, *Marshall* v. *Jerrico, Inc.*, *supra*, 446 U.S. at 248; *Dunlop* v. *Bachowski*, *supra*, 421 U.S. at 571-573; *Vaca* v.

[16] The typical federal criminal statute provides that whoever commits a prohibited act *shall* be punished. See, *e.g.*, 18 U.S.C. 371, 1001.

Sipes, 386 U.S. 171, 182 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411, 413-414 (1958).

The legislative history of the Act confirms that petitioners had substantial discretion with regard to the initiation of funding termination proceedings. Although the original version of the LEAA funding cutoff scheme was also couched in "mandatory" terms (see 42 U.S.C. (1970 ed.) 3757), the House Report accompanying the Act explained that "the Attorney General *may* terminate or suspend payments * * * on a finding [that] there is a substantial failure to comply * * *" and that he has "broad discretionary power" over the funding termination process. H.R. Rep. No. 488, 90th Cong., 1st Sess. 14, 26 (1967) (emphasis supplied). See also S. Rep. No. 1097, 90th Cong., 2d Sess. 85 (1968). In amending the Act in 1973, Congress did not divest LEAA of its broad discretion. To the contrary, the pertinent legislative history shows that the LEAA funding termination provisions were patterned after the discretionary cutoff provisions of Title VI of the Civil Rights Act and various revenue sharing statutes and therefore that LEAA funding would not automatically be suspended merely because a grantee had engaged in discrimination. See, *e.g.*, 119 Cong. Rec. 20097 (1973) (remarks of Rep. Jordan); *Amendments to Title I (LEAA) of the Omnibus Crime Control and Safe Streets Act of 1968: Hearing Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. 183 (1973). Indeed, Congress again amended Sections 509 and 518 in 1976 precisely because it thought that LEAA had too much discretionary authority. See, *e.g.*, H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. 11, 25-27 (1976); 122 Cong. Rec. 28498 (1976) (remarks of Rep. McClory).

2. Even assuming that petitioners are not entitled to absolute immunity with regard to their fund termination decisions, the court of appeals should have dismissed respondents' damages claims for failure to state a constitutional cause of action.[17] We do not dispute that, in appropriate circumstances, intentional governmental classifications may give rise to a damages action under the Fifth Amendment. See *Davis* v. *Passman*, 442 U.S. 228 (1979). In the absence of an invidiously discriminatory purpose, however, it is well settled that an official act is not unconstitutional solely because it has a discriminatory effect or impact. See, *e.g.*, *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 273-281 (1979); *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 264-265 (1977); *Washington* v. *Davis*, 426 U.S. 229, 239-241 (1976). Accordingly here, although some local police departments may have violated respondents' constitutional rights, it is apparent that petitioners did not.

Respondents do not allege that petitioners conspired with local officials to discriminate against them or that petitioners otherwise controlled, directed, or authorized the discriminatory practices of LEAA funding recipients. To the contrary, respondents' complaint details petitioners' efforts, albeit perhaps ineffective, to deter employment practices that violated LEAA's explicit statute and regulations. See 42 U.S.C. 3766(c)(1); 28 C.F.R. Part 42. Thus, respondents' essential contention is that petitioners'

[17] Although this issue was raised in the district court, in petitioners' Supplemental Brief in the court of appeals, and in their petition for rehearing below, the court of appeals declined to address this point. Compare *Butz* v. *Economou*, *supra*, 438 U.S. at 507-508.

attempts to secure compliance were inadequate and that their failure to terminate LEAA funding had the effect of encouraging continued local discrimination. But even if that doubtful assertion is true,[18] respondents' allegations fall far short of stating a constitutional claim under the Fifth Amendment. See *Personnel Administrator* v. *Feeney, supra; Village of Arlington Heights* v. *Metropolitan Housing Development Corp., supra; Washington* v. *Davis, supra.*

The First Circuit has recently applied these important principles in a closely related context. In *Francis-Sobel* v. *University of Maine*, 597 F.2d 15 (1st Cir.), cert. denied, 444 U.S. 949 (1979), the court of appeals affirmed the dismissal of a damages claim against an EEOC official for failing to give proper handling to the plaintiff's discrimination complaint against a state university. The court explained (597 F.2d at 18):

> Nor do we think that even arbitrary and capricious denial of the investigative and conciliatory benefits the EEOC can provide to a charging party transgresses the Due Process Clause in a way that would support the implication of a damage remedy. Unlike *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 * * * (1971), this case involves the loss of alleged statutory rights to administrative assistance in the vindication of underlying, fundamental statutory and constitutional interests. The interests themselves have

[18] It is unlikely that the Philadelphia Police Department, for example, would have ceased its allegedly discriminatory practices because LEAA terminated 0.6% of its budget (see note 2, *supra*), when that particular police department had resisted all other efforts to secure compliance. Cf. *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 40-43 (1976).

> not been lost, only the help that Congress intended charging parties receive in vindicating those rights. We think that such statutory rights, if they be "liberty or property" at all within the meaning of the Due Process Clause, are so tangential to the [plaintiffs' underlying rights] * * * that an implied right of action [under the Constitution] cannot and should not be found here. Indeed, were we to find that the right to EEOC assistance is protected by an implied right of action found in the Fifth Amendment, then every federal bureaucrat would be subject to judicial review of the most minute aspects of his responsibilities as they affect members of the public.

In contrast, the decision of the court of appeals in this case would subject federal officials concerned with supervision of federal funding to personal damages liability for the discriminatory acts of grantee state and local governments, even though the federal officials were not responsible for the discrimination and the victims of such discrimination have fully adequate remedies against the recipients of federal funds. See *Owen* v. *City of Independence, Missouri*, 445 U.S. 622 (1980); *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974); 42 U.S.C. 1983, 2000e, 3766(c)(4)(A). Cf. *Carlson* v. *Green*, No. 78-1261 (Apr. 22, 1980).[19]

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[19] We do not understand respondents to assert a statutory right to damages relief. In any event, such a claim would be frivolous. Nothing in the language or legislative history of the Act suggests that Congress intended to permit damage claims against LEAA officials. In fact, in 1976, Congress amended the Act to create a private remedy against LEAA funding recipients who practice discrimination. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122(b), 90 Stat. 2421, codified at 42 U.S.C. 3766(c)(4)(A); 122 Cong. Rec. 28514, 33879-33884 (1976) (remarks of Rep. Butler and

This Court's decisions concerning "state action" under the Fourteenth Amendment strongly support the conclusion that respondents have failed to allege a constitutional damages claim. In *Martinez* v. *California*, 444 U.S. 277 (1980), for example, the plaintiffs' decedent was murdered by a paroled felon soon after his release from prison. Although the parole officers' determination to release the felon may have been a proximate cause of the death, the Court unanimously concluded that the murder "is too remote a consequence of the parole officers' action to hold them responsible * * *." *Id.* at 285. And in *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 172-177 (1972), the Court held that the discriminatory practices of a private club could not be attributed to the state merely because the state regulated the club and conferred benefits to it in the form of a liquor license. In other words, a state and its officials are not liable for private discriminatory conduct unless they have purposefully caused or affirmatively encouraged such conduct. See also *Flagg Brothers* v. *Brooks*, 436 U.S. 149, 166 (1978); *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 350-359 (1974). So too here, petitioners, who have neither caused nor affirmatively approved the discriminatory practices alleged in the complaint, may not be held personally liable for respondents' injuries.

3. If the Court disagrees with our submissions regarding absolute immunity and constitutional causes of action, petitioners are nonetheless entitled to invoke a qualified immunity as a matter of law. Certainly no decision of this Court or of any court of

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Sen. Hruska). No cause of action was created against the United States or its officials, however, and none should be implied. See, *e.g.*, *Touche Ross & Co.* v. *Redington*, 442 U.S. 560 (1979); *National Railroad Passenger Corp.* v. *National Ass'n of Railroad Passengers*, 414 U.S. 453 (1974).

appeals has previously suggested that the mere failure to terminate federal funding gives rise to a Fifth Amendment claim for damages. Indeed, in 1975, when petitioners' actions occurred, it was far from clear whether many of the discriminatory practices of grant recipients alleged by respondents even amounted to a violation of the Equal Protection Clause. The use of size and weight requirements and written exams by local police departments at that time involved rapidly developing and unsettled areas of the law. See, *e.g.*, *Washington* v. *Davis*, *supra*. Because petitioners thus had no reason to believe that their actions were violating clearly established constitutional rights, respondents' claim for damages should have been summarily dismissed. See, *e.g.*, *Butz* v. *Economou*, *supra*, 438 U.S. at 507-508; *Procunier* v. *Navarette*, 434 U.S. 555, 564-566 (1978); *Wood* v. *Strickland*, 420 U.S. 308, 321-322 (1975). See also *Trapnell* v. *Riggsby*, 622 F.2d 290, 295-296 (7th Cir. 1980); *Douthit* v. *Jones*, 619 F.2d 527, 534 (5th Cir. 1980); *Atcherson* v. *Siebenmann*, 605 F.2d 1058, 1063-1067 (8th Cir. 1979).[20]

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[20] Nothing in respondents' complaint or the record before the district court suggests that petitioners' actions or failure to act were motivated by bad faith. To the contrary, as we argued in the court of appeals, that record establishes petitioners' good faith as a matter of fact. See Br. for Appellees 5-6, 9-16, 51-53; C.A. App. 186-245. Notwithstanding the Court's directive in *Butz* that the federal courts should be "alert to the possibilities of artful pleading" and that "damages suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on the defense of immunity" (438 U.S. at 507-508), the court of appeals declined to address this contention. See also *Hanrahan* v. *Hampton*, Nos. 79-912 & 79-914 (June 2, 1980) (Powell, J., dissenting), slip op. 5-7.

In sum, respondents' "extravagant charges" (*Hanrahan* v. *Hampton*, Nos. 79-912 & 79-914 (June 2, 1980) slip op. 6 (Powell, J., dissenting)) should not force these federal officials, including the Attorney General, to undergo the expense and burden of a trial. Even if petitioners ultimately were to prevail, the prospect of defending such lawsuits in the future can hardly fail to "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." *Gregoire* v. *Biddle*, *supra*, 177 F.2d 579, 581 (2d Cir. 1949). By overturning the district court's summary dismissal of respondents' complaint and remanding for trial, the court of appeals grossly "misappreciated the premises on which this Court rested its ruling in" *Butz* v. *Economou*. *Hanrahan* v. *Hampton*, *supra*, slip op. 6 (Powell, J., dissenting).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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DECEMBER 1980

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1273

NATIONAL BLACK POLICE ASSOCIATION, ET AL., APPELLANTS

v.

RICHARD W. VELDE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE LAW ENFORCEMENT ASSISTANCE ADMIN., ET AL.

Appeal from the United States District Court for the District of Columbia

(D.C. Civil Action No. 75-1444)

Argued January 5, 1979

Decided May 14, 1980

Before: BAZELON, *Senior Circuit Judge*, TAMM, *Circuit Judge* and PARKER *, *United States District Court Judge* for the District of Columbia

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* Sitting by designation pursuant to 28 U.S.C. § 292(a).

Opinion for the Court filed by *Senior Circuit Judge* BAZELON.

Opinion concurring in part, concurring in result in part, and dissenting in part filed by *Circuit Judge* TAMM.

BAZELON, *Senior Circuit Judge*: Appellants, twelve individuals and an organization,[1] appeal the district court's dismissal of their complaint. They alleged that federal agencies and officials unlawfully failed to terminate federal funding of state and local law enforcement agencies despite evidence that the funds were "used to discriminate on grounds of race and sex against plaintiffs and members of their class."[2] Appellants sought declaratory and injunctive relief against the Law Enforcement Assistance Administration (LEAA),[3] the Department of Justice, and four officials in those agencies. Appellants also sought

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[1] The individual appellants include six blacks and six women who alleged that they were denied employment, passed over for promotion, or discharged solely on the basis of their race or sex by state and local law enforcement agencies that receive funds from the Law Enforcement Assistance Administration (LEAA). The organizational appellant is the National Black Police Association, a not-for-profit Illinois corporation with over 50 affiliates in at least 20 states.

[2] Complaint ¶ 1, Appendix (App.) 5. Plaintiffs moved for class certification, but the district court did not rule on the motion before it dismissed the action.

[3] The LEAA, an agency within the Department of Justice, was created by Congress in 1968 to assist community and citizen groups in their law enforcement and criminal justice activities. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, tit. I, 82 Stat. 197 (1968), (current version at 42 U.S.C. §§ 3701 *et seq.* (1976)).

compensatory and punitive damages against the four officials in their individual capacities.[4]

Relying on the doctrines of mootness and official immunity, the district court dismissed all of appellant's claims. For reasons that appear below, we reverse.

I.

On the basis of 1976 amendments to the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Crime Control Act),[5] the district court dismissed appellants' claims for declaratory and injunctive relief as moot. We disagree.

The Omnibus Crime Control Act was first amended in 1973 to require LEAA to terminate federal funding to recipients that engage in discriminatory practices.[6] In response to LEAA's failure to carry out this civil rights enforcement requirement,[7] Congress amended the Act in 1976[8] by adding more detailed mandatory procedures to be followed by LEAA in either securing compliance with the Act's antidis-

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[4] Complaint at p. 35, App. 38.

[5] Pub. L. No. 90-351, 82 Stat. 206 (1968).

[6] Pub. L. No. 93-83, § 2, 87 Stat. 214, 42 U.S.C. § 3766(c) (1976).

[7] The House Report on the 1976 amendments stated that "[t]he response of LEAA to the 1973 civil rights amendments has been less than minimal." H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. 11 (1976). The report also stated that LEAA had not terminated its funding of any recipient "[]despite positive findings of discrimination by courts and administrative agencies . . . ." *Id.*

[8] Pub. L. No. 94-503, § 122(b), 90 Stat. 2418 (1976), 42 U.S.C. § 3766(c)(2) (1976).

crimination provision or terminating funds to non-complying recipients.

The 1976 amendments have no bearing on appellants' claims that they were injured as a result of appellees' conduct or on appellee's civil rights enforcement duties under either the Omnibus Crime Control Act or the other constitutional and statutory provisions upon which appellants base their claims for relief.[9] Thus, the 1976 amendments did not render any of appellants' claims moot and, on remand, appellants will be entitled to proceed on all causes of action stated in their complaint.[10]

II.

The district court dismissed appellants' claims for monetary damages against the four agency officials in their individual capacities on the ground of abso-

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[9] In addition to their claims under the Omnibus Crime Control Act, appellants purported to state causes of action under the fifth and fourteenth amendments; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-4 (1976); *id.* §§ 1981, 1983, 1986; and Executive Orders No. 11,246 and 11,375.

[10] Some of appellants' requests for injunctive and declaratory relief, as well as the claims for damages, are based upon allegations of LEAA's past failure to terminate funding to offending law enforcement agencies. These claims are utterly unaffected by the 1976 amendments. Moreover, appellees' underlying obligation to secure compliance with civil rights obligations or terminate funding is not affected by the 1976 amendments. Thus, the claims for declaratory and injunctive relief that are prospective in nature are based upon allegations of injury that have not been affected by the amendments. To the extent that these prospective claims require proof of LEAA's present failure to follow the new procedures required by the Omnibus Crime Control Act, appellants should be given the opportunity to prove such failure.

lute immunity. Subsequent to the district court's decision, however, the Supreme Court limited the doctrine of official immunity. We find this case now falls outside those limits, and thus reverse the district court's dismissal of the claims for monetary damages.

In *Butz* v. *Economou*,[11] the Supreme Court held that as a general rule, federal officials obtain only a qualified immunity in suits raising constitutional violations. Instead of an absolute immunity, federal officials can be sued and can defend only on the basis of good faith and reasonable grounds for their conduct.[12]

Appellees claim they are covered by a limited exception for administrative officials performing judicial and prosecutorial functions. Recognized by the Supreme Court in *Economou*, this exception was carved out to preserve absolute immunity where "essential for the conduct of the public business." 438 U.S. 478, 507 (1978). As the Court reasoned, absolute immunity is necessary to protect discretionary prosecutorial decisions from the potentially distorting effect of civil liability.[13] Appellees claim that the

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[11] 438 U.S. 478 (1978).

[12] The Court limited the availability of an absolute immunity defense to actions raising common-law tort causes of action. *See* 438 U.S. at 488-89 (construing Barr v. Matteo, 360 U.S. 564 (1959) (libel action)).

[13] An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought. . . .

* * * *

The discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete.

438 U.S. 478, 515 (1978).

complaint challenges "the conduct of LEAA's prosecutorial role in enforcing civil rights laws" [14] and thus should be met by a defense of absolute immunity. We cannot agree.

The purpose of shielding discretionary prosecutorial decisions from fears of civil liability has no place where, as here, agency officials lack discretion. Appellees have virtually no discretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients. The Omnibus Crime Control Act, as amended in 1973, provides that

> . . . [w]henever the Administration determines that a State government or any unit of general local government has failed to comply with [the nondiscrimination requirement] or an applicable regulation, it shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration shall exercise . . .

its fund termination powers.[15] The minimal matters left to LEAA's judgment—such as the assessment of "reasonable time after notification"—do not rise to the level of prosecutorial discretion that is protected by absolute immunity. Accordingly, we find that ap-

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[14] Appellees' Supp. Br. at 4.

[15] The mandatory language of 42 U.S.C. § 3766(c)(2) (Supp. V 1975) (amended 1976), when read in light of appellees' constitutional and independent statutory duty not to allow federal funds to be used in a discriminatory manner by recipients, takes appellees' civil rights enforcement duties outside the realm of discretion. *See* Brown v. Califano, No. 78-1864 (D.C. Cir. Jan. 31, 1980).

pellees have only a defense of qualified immunity and reverse the district court's dismissal of the claims for monetary damages. Appellants should be allowed to go to trial on their claims for damages and appellees given a chance to establish a defense of good faith or reasonable grounds for their conduct.[16]

III.

For the foregoing reasons, we reverse the judgment of the district court and remand for further proceedings not inconsistent with this opinion.

So ordered.

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[16] Appellees also raise, as they did in the district court, the issue of appellants' standing to maintain this action. The National Black Police Association's standing has not—and indeed it cannot—be challenged. It alleged harm to itself and its members as a result of appellees' alleged failure to terminate funding to discriminatory recipients. *Cf.* Sierra Club v. Morton, 405 U.S. 727, 734-35 (1972). Similarly, individual appellants have alleged violations of their right to be free from federal funding of state and local agencies that have discriminated against them. They have a sufficiently "personal stake in the outcome of the controversy," Baker v. Carr, 369 U.S. 186, 204 (1962), and their interest is precisely that which is protected by the Constitution and the statutes under which appellants have proceeded, Flast v. Cohen, 392 U.S. 83, 102 (1968); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970). The 1976 amendments to the Omnibus Crime Control Act, which added a judicial review provision for parties such as appellants, remove any doubt as to appellants' standing. Pub. L. No. 94-503, § 122(b), 90 Stat. 2421 (1976), 42 U.S.C. § 3766(c)(4)(A) (1976), and we are satisfied that—absent a failure of proof after discovery is completed—appellants have standing to maintain this action. The district court did not rule on appellants' standing argument, and we expect that the district court will dispose of the pending motion to dismiss for lack of standing, along with pending motions to resume discovery and for class certification on remand.

TAMM, *Circuit Judge, concurring in part, concurring in result in part, and dissenting in part*: The majority opinion in this case deals with three issues: mootness,[1] standing,[2] and official immunity.[3] I concur in Judge Bazelon's analysis and result on the mootness question and therefore do not address that issue further. Although I also agree that plaintiffs-appellants have standing adequate to survive a motion to dismiss, I reach this result by a route different from that of the majority. On the question of whether the individual defendants are protected by absolute immunity, I dissent.[4]

I. STANDING

In *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), the Supreme Court summarized the law of standing. "In order to satisfy Art. III, the plaintiff must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Id.* at 99. Moreover,

> [e]ven when a case falls within these constitutional boundaries, a plaintiff may still lack standing under . . . prudential principles [if he does not] assert an injury that is peculiar to himself

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[1] *See* Maj. Op. at 3-4.

[2] *See id.* at 7 n.16.

[3] *See id.* at 4-7.

[4] Congress recently enacted the Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167, which amends and recodifies the statutory provisions governing the Law Enforcement Assistance Administration (LEAA). This enactment does not bear on the present action, *see id.* § 1301(e), and therefore is not addressed in this opinion.

> or to a distinct group of which he is a part, rather than one "shared in substantially equal measure by all or a large class of citizens."

Id. at 99-100 (quoting *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975)). Although Congress may modify such prudential principles,[5] it may not "abrogate the Art.

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[5] Congress has not modified these principles for actions such as the present one. Contrary to the majority's statement, *see* Maj. Op. at 7 n.16, 42 U.S.C. § 3766(c)(4)(A) (1976) does not attempt to confer standing on litigants such as the plaintiffs here. As the statute on its face suggests, and as its legislative history confirms, the provision in question only authorizes an action against *state or local* governments or officials that have discriminated in violation of 42 U.S.C. § 3766(c) (1976). No action against the federal government or its officials was intended, and thus the present suit is not authorized by this statute.

Section 3766(c)(4)(A) provides:

> Whenever a State government or unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this subsection, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction. Administrative remedies shall be deemed to be exhausted upon the expiration of sixty days after the date of the administrative complaint was filed with the Administration, or any other administrative enforcement agency, unless within such period there has been a determination by the Administration or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

42 U.S.C. § 3766(c)(4)(A) (1976). Although the statute does not expressly state against whom "a civil action may be instituted," the language of the statute rather clearly reveals an intent to authorize a private action only against those

entities or individuals that have actually engaged in the discrimination.

The legislative history of § 3766(c)(4)(A) confirms this view. Although a House of Representatives committee report on the legislation contains a statement suggesting the availability of an action "against the United States" as well as against state and local governments and officials, *see* H.R. REP. No. 94-1155, 94th Cong., 2d Sess. 27 (1976), the language contained in § 3766(c)(4)(A) was added by a House floor amendment *after* the House Judiciary Committee had adopted this report, *see* 122 CONG. REC. 28,513-14 (1976). In support of this floor amendment, Representative Butler stated: "[P]rivate civil actions are authorized against *a State government or unit of local government* where an officer or employee in an official capacity has engaged in a pattern or practice of discrimination prohibited by this section." *Id.* at 28,514 (emphasis added). The Senate version of the legislation had no provision comparable to § 3766(c)(4)(A), but the Senate agreed to the provision as part of a conference report that resolved House and Senate differences. *See* 122 CONG. REC. 33,879-84 (1976). In support of the conference report, Senator Hruska described the private-action provision contained in the report:

> [T]he act authorizes private parties to initiate civil actions in Federal or State courts against a *State government or unit of local government or any officer or employee thereof* acting in an official capacity whenever such government employee or officer has engaged or is engaging in any discriminatory act or practice prohibited by the LEAA Act. This provision is an analogy to title 42, section 19[83], United States Code, which authorizes action in Federal court against State or local officials acting under color of law.

Id. at 33,880 (emphasis added).

The fact that Congress considered the possibility of a cause of action against federal officials, but instead adopted a provision authorizing suits only against state or local officials, may well bear on the merits of plaintiffs' claims in this case. Like the majority, however, I believe it inadvisable to express any views on the merits of this case without a more complete evidentiary record and without a district court consideration of the many issues that are presented.

III minima: A plaintiff must always have suffered 'a distinct and palpable injury to himself,' [*Warth* v. *Seldin*, 422 U.S. at 501], that is likely to be redressed if the requested relief is granted. *Simon* v. *Eastern Kentucky Welfare Rights Org.*, [426 U.S. 26, 38 (1976)]." *Id.* at 100.[6]

In the present case, plaintiffs allege that state and local entities funded by the Law Enforcement Assistance Administration (LEAA) have unlawfully discriminated against them.[7] Being subjected to unlaw-

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[6] It would seem a fine line indeed between the prudential principle that a plaintiff must assert "an injury that is peculiar to himself" and the supposedly less stringent constitutional requirement that he assert "a distinct and palpable injury to himself."

[7] Plaintiffs also claim that the Government's standing argument is wrong for the simple reason that it has a mistaken premise, namely, the statement that plaintiffs' "alleged injuries" are the "alleged racial discrimination by certain state and local law enforcement agencies." This is *not* the legal injury which forms the basis of *this* lawsuit. Rather, the legal injury which plaintiffs suffer is defendants' knowing funding of discriminatory law enforcement agencies in contravention of constitutional and statutory obligation owed by *defendants* to plaintiffs.

Reply Brief for Appellants at 27 (emphasis in original). In making this claim of injury, plaintiffs expressly eschew any reliance on their status as taxpayers. Transcript of Oral Argument at 6.

This claim of injury must be rejected. If plaintiffs are saying that their injury derives from being discriminated against with federal, as opposed to state or local, funding, their supposed "injury" is too tenuous and abstract to suffice as a basis for standing. If, on the other hand, they are claiming an injury merely in the fact that the defendants fund unlawful discrimination, without regard to whether they personally

ful discrimination is clearly a distinct and personal injury sufficient to satisfy both article III and the prudential standing rules. The more difficult question relates to "the redressability aspect of standing," *Greater Tampa Chamber of Commerce* v. *Goldschmidt*, No. 79-1123, slip op. at 7 (D.C. Cir. Feb. 8, 1980), which is part of "the Art. III minima," *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. at 100.[8] Under this aspect of the standing doctrine, a plaintiff must show "an injury to himself that is likely to be redressed by a favorable decision." *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. at 38. In other words, "there [must be] a 'substantial likelihood' that the relief requested will redress the injury claimed . . . ." *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 75 n.20 (1978). As this court has observed, recent Supreme Court cases "reveal[] the seriousness with which the Supreme Court has taken" this aspect of standing. *Greater Tampa Chamber of Commerce* v. *Goldschmidt*, slip op. at 7. *See also NAACP*,

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are victims of the discrimination, this does not constitute "'a distinct and palpable injury to [themselves],'" Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1979) (quoting Warth v. Seldin, 422 U.S. 490, 501 (1975)), let alone "an injury that is peculiar to [themselves] or to a distinct group of which [they are] a part, rather than one 'shared in substantially equal measure by all or a large class of citizens,'" *id.* at 100 (quoting Warth v. Seldin, 422 U.S. at 499). Such a generalized grievance simply does not constitute sufficient "injury" for the purpose of standing to sue in the federal courts.

[8] Because this aspect of standing is constitutionally required, the presence of a statute attempting to modify this rule would not be controlling. *See also* notes 5-6 *supra*.

Boston Chapter v. *Harris*, 607 F.2d 514, 520-22, 524 (1st Cir. 1979).

In arguing that plaintiffs lack standing, the Government relies heavily on *Simon* v. *Eastern Kentucky Welfare Rights Organization*. In *Eastern Kentucky*, a group of indigents contended that the Internal Revenue Service had violated its statutory obligations by granting favorable tax treatment to nonprofit hospitals even though the hospitals denied most services to indigents. The Court found that the indigents lacked standing, because it was "purely speculative" that a favorable court decision would redress their injuries: "So far as the complaint sheds light, it is just as plausible that the hospitals to which respondents may apply for service would elect to forgo favorable tax treatment to avoid the undetermined financial drain of an increase in the level of uncompensated services." 426 U.S. at 42-43.

The Government argues that the *Eastern Kentucky* rationale applies in the present case

> since [plaintiffs] cannot show that their alleged injuries (alleged racial discrimination by certain state and local law enforcement agencies) are likely to be redressed by a favorable decision and the judicial relief they seek (the termination of LEAA funding to those state and local agencies). Plaintiffs cannot make this showing because the state and local agencies might well choose not to receive LEAA funding rather than to discontinue their challenged practices.

Brief for Appellees at 34-35 (citations omitted). This case, however, comes to us on a motion to dismiss, granted by the district court before any discovery or evidentiary proceedings had begun. Thus, although the Government might be correct in asserting that

plaintiffs cannot establish "the redressability aspect of standing," they have not yet had an opportunity to do so.[9] In *Committee for Full Employment* v. *Blumenthal*, 606 F.2d 1062 (D.C. Cir. 1979) (Bazelon, J.), this court faced a nearly identical situation. The plaintiffs in that case had sued the Secretary of the Treasury for failing to discontinue the funding of state and local governments that, according to the plaintiffs, had unlawfully discriminated against them. This court reversed the district court's decision to dismiss the action for lack of standing:

> At the very least, appellants were entitled to conduct discovery to buttress their allegation that there is a substantial likelihood that the relief they request will eliminate their injury. Their pleadings are not so deficient on their face, nor so implausible, that the district court was entitled to conclude the standing issue on a motion to dismiss.

Id. at 1067. Likewise, at this stage of the proceedings in the present case, plaintiffs' pleadings are sufficient to resist a motion to dismiss based on standing. In my view, contrary to the majority's suggestion, see Maj. Op. at 7 n.16, the district court should defer its final determination of the standing question until evidence is presented on the redressability issue.[10]

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[9] Although standing is usually decided on the pleadings, the question sometimes depends on the development of evidence concerning the factual requisites for establishing standing. *See* Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 115 n.31 (1979); NAACP, Boston Chapter v. Harris, 607 F.2d 514, 526 (1st Cir. 1979).

[10] Although plaintiffs claim compensatory and punitive damages in addition to seeking declaratory and injunctive relief, this does not negate the requirement of standing. To be sure,

II. Official Immunity

The majority holds that the four individual defendants in this case are entitled only to qualified, and not to absolute, immunity in resisting plaintiffs' claims for monetary damages. I disagree.

In *Butz* v. *Economou*, 438 U.S. 478 (1978), the Supreme Court ruled that a federal official's immunity from monetary liability for constitutional violations [11] is generally a qualified one, depending on proof that the official acted reasonably and in good faith. Nonetheless, the Court made clear that this general rule does not apply "where it is demonstrated that absolute immunity is essential for the conduct of public business." *Id.* at 507. In particular, the Court observed:

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a person suffering actual money damages has an adequate "injury" for standing purposes. Nonetheless, to establish his standing, the complainant must also show that his damages were caused by the governmental conduct that he claims was unlawful. The requirement of causation, which parallels "the redressability aspect of standing," demands that the complainant's injury "fairly can be traced to the challenged action of the defendant." Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41 (1975). *See* Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 74 (1978). A claim of monetary damages cannot establish standing unless this causation/redressability component of the standing requirement is met.

[11] The Court in *Economou* limited its holding to constitutional claims, 438 U.S. at 495 n.22, although it also addressed claims of an "officer ignor[ing] an express statutory . . . limitation on his authority," *id.* at 489. Because I find that even under *Economou* the defendant officials are protected by an absolute immunity, I need not reach the issue of whether certain of plaintiffs' claims are outside the scope of the *Economou* ruling.

> We . . . believe that agency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts. The decision to initiate administrative proceedings against an individual or corporation is very much like the prosecutor's decision to initiate or move forward with a criminal prosecution. An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought. . . .
>
> The discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete. . . .
>
> . . .
>
> We believe that agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment.

Id. at 515-16.

Although the Court in *Economou* emphasized the need to protect decisionmaking *in favor* of initiating or moving forward with proceedings, decisions *not* to initiate or move forward clearly must be given the same protection, for to immunize decisions in one direction but not the other would eviscerate the very discretion that the Court sought to protect. As the Government points out, to create a one-sided immunity protecting only decisions to move forward would be to create "an improper bias in decisionmaking, i.e., prosecutors would be encouraged to act, as opposed to taking no action. Prosecutors must be free to make a decision without being influenced in

either direction by fear of liability." Supplemental Brief for Appellees at 7.

To determine whether absolute "prosecutorial" immunity applies, we must focus on the particular conduct and circumstances that gave rise to the claim of liability. *See Tigue* v. *Swaim*, 585 F.2d 909, 914 (8th Cir. 1978). *See also Forsyth* v. *Kleindienst*, 599 F.2d 1203, 1212 (3d Cir. 1979). Here, plaintiffs claim damages from the failure of the four individual defendants to terminate federal funding to state and local entities that were allegedly discriminating against plaintiffs. The challenged conduct relates directly to the defendant officials' decisionmaking concerning whether to move forward with a proceeding to terminate funding, or, for example, to seek voluntary compliance with the statutory nondiscrimination requirements (perhaps under the threat of termination). In my view, this type of decisionmaking is exactly what the Supreme Court had in mind when it spoke of functions "analogous to those of a prosecutor," *Butz* v. *Economou*, 438 U.S. at 515. *See also Simons* v. *Bellinger*, No. 77-2012 (D.C. Cir. Jan. 4, 1980) (finding members of bar association committee on unauthorized practice of law entitled to absolute immunity).

Contrary to the majority's suggestion, *see* Maj. Op. at 6, the defendant officials, under the applicable statutory scheme, did not lack the requisite discretion for "prosecutorial" immunity.[12] The key statu-

[12] Although the basic statutory provision concerning the prosecution of federal crimes states that "each United States attorney, within his district, *shall* . . . prosecute for *all* offenses against the United States," 28 U.S.C. § 547 (1976) (emphasis added), no one would seriously contend that United States Attorneys lack discretion in carrying out their prosecutorial functions. *See Newman* v. *United States*, 382 F.2d 479 (D.C. Cir. 1967) (Burger, J.).

tory provisions are sections 3766(c)(2) and 3757 of title 42 of the United States Code, 42 U.S.C. §§ 3766 (c)(2), 3757 (Supp. V 1975) (amended 1976),[13] as

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[13] Section 3766(c)(2) provides:

> Whenever the Administration determines that a State government or any unit of general local government has failed to comply with [the nondiscrimination requirements], it shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration shall exercise the powers and functions provided in section 3757 of this title, and is authorized concurrently with such exercise—
>
> (A) to institute an appropriate civil action;
>
> (B) to exercise the powers and functions pursuant to title VI of the Civil Rights Act of 1964 (section 2000d of this title); or
>
> (C) to take such other action as may be provided by law.

42 U.S.C. § 3766(c)(2) (Supp. V 1975) (amended 1976). The "powers and functions provided in section 3757," in turn, are as follows:

> Whenever the Administration, after reasonable notice and opportunity for hearing to an applicant or a grantee under this chapter, finds that, with respect to any payments made or to be made under this chapter, there is a substantial failure to comply with—
>
> (a) the provisions of this chapter;
>
> (b) regulations promulgated by the Administration under this chapter; or
>
> (c) a plan or application submitted in accordance with the provisions of this chapter;
>
> the Administration shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure.

Id. § 3757 (amended 1976).

those sections read before Congress enacted amendments in 1976.[14] In concluding that section 3766 (c)(2) leaves "virtually no discretion" with the defendant officials, *see* Maj. Op. at 6, the majority relies on an unduly narrow reading of the statutory language.[15] For section 3766(c)(2) to apply, the appropriate LEAA officials must first "determine" that a governmental unit has violated the nondiscrimination provisions. After such a determination is made, the officials then seek voluntary compliance by the governmental unit with the assistance of the chief executive of the state involved. The LEAA officials must decide when a "reasonable time" has passed after such assistance has been unsuccessfully requested, at which point the officials are directed to

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[14] Plaintiffs' claims for damages are based on conduct of the defendant officials before the statute was amended in 1976, and it is thus the pre-amendment version of the statute that is controlling on the damages question. Even as amended in 1976, however, there is still room for some discretion concerning determinations of noncompliance. *See* H.R. REP. NO. 94-1155, 94th Cong., 2d Sess. 26-27 (1976).

[15] Speaking on the floor of the House of Representatives, Representative Jordan described the intended operation of these nondiscrimination provisions:

> [W]e now have a provision in the bill which will strengthen civil rights enforcement, a provision in the bill which will not say we cut off the funds if they simply discriminate, but that this Law Enforcement Assistance Administration must adhere to the provisions of title 6 of the Civil Rights Act of 1964, that before any funds are denied any agency or entity in terms of the charge they have discriminated must be entitled to a hearing.
>
> The Governor of the State is the first one who must make the effort to resolve any conflict which will exist. Negotiations, hearings, due process, all is provided for.

119 CONG REC. 20,097 (1973).

exercise the powers and functions provided in section 3757 and are also authorized to take any other appropriate and lawful action to secure compliance. Section 3757 calls for a termination of funding only if there has been a "substantial" failure to comply with the nondiscrimination provisions. Moreover, the officials have express discretion in determining the extent of any cutoff that might be ordered. Indeed, it was congressional dissatisfaction with this discretionary scheme that led to the adoption in 1976 of amendments "to provide a mandatory procedure which the Administration must follow in the event a recipient of LEAA funds is determined to have used those funds for a discriminatory purpose," H.R. REP. No. 94-1155, 94th Cong., 2d Sess. 25 (1976).[16]

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[16] In adding the nondiscrimination provisions to the LEAA funding program, Congress obviously intended to continue the funding of criminal justice programs, but without unlawful discrimination. Although a cutoff of funds to one recipient may eventually bring that recipient and others into compliance with the nondiscrimination requirements, *negotiated* compliance, without the need for a cutoff, more directly and immediately achieves the overall congressional goal of "funding without discrimination." Such an overall goal necessarily creates a tension between the desire to continue funding criminal justice programs and the desire to eliminate discrimination, and this tension in turn requires that officials have discretion in implementing these twin congressional policies.

In amending the statute in 1976, Congress recognized that the LEAA had been attempting to secure compliance with the nondiscrimination provisions, but Congress indicated dissatisfaction with the manner in which the LEAA officials had exercised their discretion and therefore decided to limit that discretion in the future.

> The responsibility of LEAA and its failure to enforce aggressively the pertinent civil rights provisions does

The Supreme Court's language in *Ferri* v. *Ackerman*, 100 S.Ct. 402 (1979), is equally appropriate in the present context:

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not emerge . . . as unmistakably clear. There is evidence that LEAA did try to influence the course of the hiring and personnel practices of the offending police departments, but there is also evidence that the influence was not remarkably successful. . . .

It is my view that the argument surrounding LEAA's performance in the area of civil rights is caused by a fundamental difference in the understanding of the purpose and intent of the remedies contained in the civil rights provisions of the act. On the one hand, there are those who believe that the termination provisions of the act, that is—the cutoff of Federal funds—should be used freely when evidence of discrimination is found. On the other hand, there are those who view the LEAA program as one primarily for assistance to State and local criminal justice agencies for use in the long range fight against crime. This latter school of thought holds that fund termination is the most drastic remedy available and should be used sparingly. Because of these differences certain ambiguities have arisen in the determination of how the civil rights provisions of the act should be administered. Therefore, in my view, a clarification of the intent of the Congress is needed to establish just when and how the various procedures contained in the act should be used.

. . . [Under the 1976 amendments,] the duties of LEAA will be clear, and the threat of fund cutoff will be equally as clear to the fund recipients. Hopefully, this amendment will eliminate charges and countercharges of what should have been done in this important area. Thereby the objectives of the act both as to criminal justice funding and nondiscrimination will be accomplished.

122 CONG. REC. 28,498 (1976) (remarks of Rep. McClory).

Whether the 1976 amendments would affect the ability of LEAA officials to claim absolute immunity for conduct arising after their effective date is a question we need not resolve. *See* note 14 *supra*.

> As public servants, the prosecutor and the judge represent the interest of society as a whole. The conduct of their official duties may adversely affect a wide variety of different individuals, each of whom may be a potential source of future controversy. The societal interest in providing such public officials with the maximum ability to deal fearlessly and impartially with the public at large has long been recognized as an acceptable justification for official immunity. The point of immunity for such officials is to forestall an atmosphere of intimidation that would conflict with their resolve to perform their designated functions in a principled fashion.

Id. at 408-09 (footnote omitted). By denying absolute immunity to administrators charged with making choices akin to those of a prosecutor, the majority decision is bound to "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties," *Gregoire* v. *Biddle*, 177 F.2d 579, 581 (2d Cir. 1949) (Learned Hand, J.), *cert. denied*, 339 U.S. 949 (1950), *quoted in Ferri* v. *Ackerman*, 100 S.Ct. at 409 n.20.[17] I cannot join such an action.

---

[17] As the potential liability of federal officials for constitutional wrongs expands, *see, e.g.*, Davis v. Passman, 442 U.S. 228 (1979), it becomes all the more important to safeguard vigorously the discretion of those federal officials whose functions must be especially protected from "the constant dread of retaliation," Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949) (Learned Hand, J.), *cert. denied*, 339 U.S. 949 (1950), *quoted in* Ferri v. Ackerman, 100 S.Ct. 402, 409 n.20 (1979). *Cf.* Dalehite v. United States, 346 U.S. 15, 57 (1953) (Jackson, J., dissenting) ("it is not a tort for government to govern"). *See also* K. DAVIS, ADMINISTRATIVE LAW TREATISE § 26.00-0, at 216 (Spec. Supp. 1980) (extent of liability for

constitutional torts may be affected by extent of official immunity). For an argument that absolute immunity for all high ranking executive officials should be reinstated, see Comment, *Qualified Abrogation of Federal Executive Immunity: A Risky Experiment in Judicial Legislation*, 19 S. TEX. L.J. 683 (1978).

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1979

Civil Action No. 75-1444

No. 77-1273

NATIONAL BLACK POLICE ASSOCIATION, ET AL., APPELLANTS

v.

RICHARD W. VELDE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE LAW ENFORCEMENT ASSISTANCE ADMIN., ET AL.

Appeal from the United States District Court for the District of Columbia

Before: BAZELON, Senior Circuit Judge, TAMM, Circuit Judge, and PARKER *, United States District Court Judge for the District of Columbia

JUDGMENT

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

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* Sitting by designation pursuant to 28 U.S.C. § 292(a).

ON CONSIDERATION THEREOF It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby reversed and the case is remanded to the District Court for further proceedings, not inconsistent with the opinion of this Court filed herein this date.

Per Curiam
For the Court

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Date: May 14, 1980

Opinion for the Court filed by Senior Circuit Judge Bazelon

Opinion concurring in part, concurring in result in part, and dissenting in part filed by Circuit Judge Tamm

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1979

Civil Action No. 75-1444

No. 77-1273

NATIONAL BLACK POLICE ASSOCIATION, ET AL., APPELLANTS

v.

RICHARD W. VELDE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE LAW ENFORCEMENT ASSISTANCE ADMIN., ET AL.

Before: Wright, Chief Judge; Tamm, Robinson, MacKinnon, Robb, Wilkey, Mikva, and Edwards, Circuit Judges

ORDER

The suggestion for rehearing *en banc* filed by appellees (federal) having been transmitted to the full Court and a majority of the judges in regular active service not having voted in favor thereof, it is

ORDERED, by the Court, *en banc*, that appellees' aforesaid suggestion for rehearing *en banc* is denied.

Per Curiam
For the Court

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Aug. 1, 1980

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1979

Civil Action No. 75-1444

No. 77-1273

NATIONAL BLACK POLICE ASSOCIATION, ET AL., APPELLANTS

v.

RICHARD W. VELDE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE LAW ENFORCEMENT ASSISTANCE ADMIN., ET AL.

Before: Bazelon, Senior Circuit Judge; Tamm, Circuit Judge; and Parker *, Judge, United States District Court for the District of Columbia

ORDER

Upon consideration of appellees' (federal) petition for rehearing, it is

ORDERED, by the Court, that appellees' aforesaid petition for rehearing is denied.

Per Curiam
For the Court

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Aug. 1, 1980

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* Sitting by designation pursuant to Title 28 U.S.C. § 292(a).

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

Filed Dec. 8, 1976

NATIONAL BLACK POLICE ASSOCIATION, ET AL., PLAINTIFFS

v.

RICHARD W. VELDE, ET AL., DEFENDANTS

ORDER

Upon consideration of defendants' motion to dismiss or for summary judgment, defendants' alternative motion to dismiss as moot, plaintiffs' oppositions thereto, the memoranda in support thereof and in opposition thereto, the entire record herein, and the Court having been fully apprised in the premises, it appears to the Court that,

A. Insofar as plaintiffs assert claims for declaratory and injunctive relief against the defendants in their official capacities, this action has been rendered moot by virtue of the enactment of the Crime Control Act of 1976, P.L. 94-503, on October 15, 1976. *See Hall* v. *Beals*, 396 U.S. 45, 48 (1968); *Diffenderfer* v. *Central Baptist Church*, 404 U.S. 412, 414 (1972); *Golden* v. *Zwickler*, 394 U.S. 103, 108 (1969); *Cort* v. *Ash*, 422 U.S. 66, 74-77 (1975).

B. As to plaintiffs' claims against the defendants in their individual capacities, the challenged actions of the defendants clearly fall within the outer perim-

eter of the line of their official duties, *Barr* v. *Mateo*, 360 U.S. 564 (1959), and discerning inquiry leads to the conclusion that "the contributions of immunity to effective government" in the present context significantly "outweighs the perhaps recurring harm to individual citizens," *Doe* v. *McMillan*, 412 U.S. 306, 320 (1973); *see Henderson* v. *Bluemink*, 511 F.2d 399, 401 (D.C. Cir. 1974). Consequently, plaintiffs' claims for monetary damages against the defendants in their individual capacities are barred by the doctrine of official immunity.

In accordance with the foregoing, it is, by the Court this 8th day of December, 1976,

ORDERED that insofar as plaintiffs sue the defendants in their official capacities, this action is dismissed as moot. And it is further

ORDERED that insofar as plaintiffs sue the defendants in their individual capacities, this action is dismissed.

/s/ Howard F. Corcoran
Judge

Dec. 8, 1976

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FILED
JUL 23 1981
ALEXANDER L. STEVAS,

No. 80-1074

In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, ET AL., PETITIONERS,

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

Volume I

Petition for writ of certiorari filed December 29, 1980
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Relevant Docket Entries

United States District Court for the District of Columbia

Civil Action No. 75-1444

DATE		PROCEEDINGS
1975		
Sept	4	COMPLAINT;.
Sept	15	REQUEST by pltffs' for admissions and interrogatories; c/m 9-11-75.
Sept	15	SECOND interrogatories by pltffs; c/m 9-11-75.
Sept	15	REQUEST by pltffs. for production of documents; c/m 9-11-75.
Sept	17	SECOND Request by pltffs. for admissions; Exhibit; c/m 9-11-75.
Oct	29	MOTION by pltffs' to drop a party pltff. and to amend the complaint; Memorandum; c/s 10-29-75.
Oct	29	AMENDED COMPLAINT; Notice; c/s 10-29-75.
Nov	4	MOTION by defts. for protective order staying discovery; P&A; c/m.
Nov	14	OPPOSITION by pltffs' to defts' motion for a protective order staying all discovery; P&A; c/m 11-13-75.
Nov	17	REPLY by defts. to pltffs' opposition to defts' motion for a protective order staying discovery; Affidavit of Winifred A. Dunton; Exhibit A & B; c/m.
Nov	19	REQUEST by defts. for hearing on all outstanding motions; c/m 11-19-75.
Nov	19	SUGGESTION by defts. that the court sua sponte strike the complaint alternative motion to strike complaint and Larson affidavit; P&A; c/m 11-19-75.

Dec	1	MEMORANDUM by pltffs. of points and authorities in opposition to defts' suggestion and alternative motion to strike complaint and Larson affidavit; c/m 11–26–75.
Dec	4	MOTION by pltffs. for certification as a class action; P&A; c/m 12–3–75.
Dec	16	STATUS CALL. Motion of pltffs. to drop a party and amend the complaint granted; suggestion of defts. and alternative motion to strike the complaint argued and granted without prejudice to pltff. to amend complaint within 20 days; Defts. have 30 days thereafter to answer amended complaint; all other proceedings held in abeyance pending filing of amended complaint. (OTBP) (Rep. Eva M. Sanche) Corcoran, J.
1976		
Jan	2	AMENDED complaint; c/m 1–2–76.
Dec	22	ORDER dropping The International Association of Women Police, Inc. as a party pltff. Pltff's shall have until 1–5–76 to replead. Defts shall have until 30 days from the date of service of pltff's new complaint to answer; All proceedings stayed. (N) Corcoran, J.
Jan	16	MOTION by pltffs' for a Preliminary Injunction and a Writ of Mandamus Affidavit of E. Richard Larson w/exhibit A, B, C, D, E, F, G & H; Affidavit of Penelope Brace w/exhibit A; Affidavit of Ollie S. Glover w/ exhibit A & B; Exhibit (Vol. VI report of U.S. Commission on Civil Rights); c/s 1–14–76; P&A w/ Appendix A.
Jan	16	NOTICE by pltffs. to take deposition of Herbert C. Rice; c/m 1–14–76.

Jan 16 MOTION by pltffs' to vacate the stay on answering previous discovery in this action; P&A; c/s 1-14-76.

Feb 9 MOTION by defts. to dismiss or for summary judgment; Statement; P&A w/attachment; Statement of Reasons; Appendix; Exhibit; Affidavit of Edward H. Levi w/attachments 1, 2 & 3; Affidavit of Richard W. Velde w/attachments 1, 2 & 3; Affidavit of Charles R. Work w/attachments A, B, C & D; Affidavit of Herbert C. Rice; w/attachments 1 thru 5; c/m 2-9-76.

Feb 18 MEMORANDUM of points and authorities by defts. in opposition to pltffs' motion to vacate stay; c/m 2-18-76.

Feb 18 MEMORANDUM of points and authorities by defts. in opposition to pltffs' motion for Preliminary Injunction; c/m 2-18-76.

Feb 18 MEMORANDUM of points and authorities by defts. in opposition to motion by pltffs' for certification as a class action; c/m 2-18-7.

Mar 24 OPPOSITION of pltffs' to defts' motion to dismiss or for summary judgment; statement of genuine issues; Affidavit of E. Richard Larson w/exhibit A; Affidavit of Bruce Bailey w/exhibit A; & B; Affidavit of Kristen Heemstra w/exhibits A, B, C & D; Affidavit of Kent G. McKinney w/exhibits A & B; Affidavit of Penny Orazetti w/exhibit A; Affidavit of Roberta Ledyard w/exhibit A; Affidavit of Robert Booth w/exhibits A, B & C; Affidavit of Jennie McAllister w/exhibits A, B & C; Affidavit of E. Richard Larson; P&A; Exhibit; c/m 3-24-76.

May 17 REPLY by defts' to pltffs' opposition to defts' motion to dismiss or for summary

judgment; Exhibit 1, 1A, 2, 3, 4, 5, 6 & 7; c/m 5–17–76.

May 17 RESPONSE by defts' to pltffs' "statement of genuine issues;" c/m 5–17–76.

June 07 RESPONSE by pltfs. to the six new defenses belatedly raised in def reply to pltfs. opposition to defts. motion to dismiss or for summary judgment; table of contents; table of cases; attachment Appendix; Exhibit 1 and 2; c/m 6/7/76.

Jun 23 SUPPLEMENTARY memorandum of defts' on motion to dismiss or for summary judgment; Attachment 1; c/m 6–23–76.

Jun 25 MOTION of deft. to dismiss or for summary judgment argued and take under advisement. (Rep. Eva M. Sanche) Corcoran, J.

July 2 POST-HEARING memorandum by defts.; c/m 7/2/76.

Nov 9 ALTERNATIVE Motion by defts' to dismiss as moot; P&A; Attachment c/m 11–9–76.

Nov 23 MEMORANDUM by pltffs' of points and authorities in opposition to defts' alternative motion to dismiss as moot; c/m 11–22–76.

Dec 14 ORDER filed Dec. 8, 1976 dismissing cause. (see order for details (N) Corcoran, J.

1977

Feb 4 NOTICE of Appeal by pltffs' from order dismissing action entered Dec. 8, 1976; $5.00 paid and credited to U.S.; copy sent to Nathan Dodell.

Feb 4 DEPOSIT by pltffs' in the amount of $250.00 in lieu of Cost Bond on Appeal.

Mar 15 RECORD on Appeal delivered to USCA; Receipt acknowledged. (USCA No. 77–1273)

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

3-15-77	Certified Original Record (3 volumes) including 1 brown binder, 1 brown expandable folder, 1 manila envelope and 2 volumes transcript under separate cover (n-2)
4-26-77	15-Appellants' brief (m-22)
4-26-77	15-Appellants' statutes and Regulations (m-22)
4-27-77	4-Appellants' motion to proceed under Rule 30(c), deferred appendix (m-22)
5-6-77	Clerk's order granting appellants' motion to proceed under Rule 30(c) and the parties are granted leave to proceed under Rule 30(c). In lieu of submitting one copy of the typewritten or page proof brief provided under Rule 30(c), counsel shall submit 7 copies thereof for filing
10-6-77	7-Joint Appendix Vol. I, II & III (m-5)
10-13-77	15-Appellants' reply brief (m-11)
10-19-77	15-Appellees' brief (m-19)
10-20-77	15-Appellants' brief (m-18)
2-9-78	4-Appellees' motion to postpone oral argument (m-9)
2-15-78	Clerk's order granting appellees' motion to postpone oral argument and the oral argument schedule is postponed pending further order of the Court
2-16-78	4-Appellants' opposition to appellees' motion to postpone oral argument (m-14) (See above order)

2-21-78	4-Appellants' motion for reconsideration of this Court's order of 2/15/78 (m-16)
3-8-78	Per Curiam order denying appellants' motion for reconsideration of the Court's order postponing oral argument; CJ Bazelon, Wright and Wilkey, CJ's
7-7-78	4-Notification from counsel for appellee (Dept. of Justice) advising of decision in SC No. 76-709 (*Butz* v. *Enonomou*)
7-18-78	Order per CJ Wright, sua sponte, that appellants file a supplemental memorandum within 15 days of this order, and appellees respond 15 days after on the impact of the decision in *Butz* v. *Economou*.
8-4-78	15-Appellants' supplemental brief (m-2)
9-15-78	15-Appellees' supplemental memorandum (m-15)
12-19-78	4-Letter from counsel for appellee advising of additional authorities pursuant to Local Rule 8(g) (m-19)
1-5-79	Argued before Bazelon*, Tamm, CJ's and Parker, US District Court Judge for DC
10-15-79	4-Letter from counsel for federal appellee advising of additional authorities pursuant to FRAP 28(j) (m-15)
11-30-79	4-Transcripts of oral argument
2-1-80	4-Letter from counsel for appellant advising of additional authorities pursuant to Rule 28(j), FRAP (m-29)
3-6-80	4-Letter from counsel for appellee advising of additional authorities pursuant to Rule 28(j), FRAP (m-6)
5-14-80	Opinion for the Court filed by Senior Circuit Judge Bazelon.

5-14-80	Opinion concurring in part, concurring in result in part, and dissenting in part filed by Circuit Judge Tamm.
5-14-80	Ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby reversed and the case is remanded to the District Court for further proceedings, not inconsistent with the opinion of this Court filed here this date.
5-19-80	4-Appellees' motion to extend time to file petition for rehearing to 6/27/80 (m-19)
5-27-80	1-Appellant's bill of costs (m-23)
6-3-80	Per Curiam order granting appellees' motion to extend time to file petition for rehearing to 6/27/80; SCJ Bazelon; Tamm, CJ and Parker, USDC Judge for DC
6-16-80	4-Appellee's motion to extend time to file petition for rehearing to 7-11-80 (m-1)
06-25-80	Per Curiam order granting appellees' motion to extend time to file petition for rehearing to 7-11-80; SCJ Bazelon; Tamm, CJ and Parker, USDC Judge for DC
7-11-80	15-Appellees' petition for rehearing and suggestion for rehearing en banc (m-11)
08-01-80	Per Curiam order that appellees' petition for rehearing is denied; SCJ Bazelon, Tamm CJ; and Parker, USDC Judge
08-01-80	Per Curiam order, en banc, that appellees' suggestion for rehearing, en banc, is denied; CJ Wright, Tamm, Robinson, MacKinnon, Robb, Wilkey, Wald, Mikva and Edward CJ's

08-12-80	4-Appellees' motion for a stay of mandate (M-12)
08-25-80	Per Curiam order that appellee's motion for a stay of mandate is granted and the Clerk is directed not to issue the mandate in this case prior to 9-9-80: SCJ Bazelon, Tamm, CJ, and Parker, USDC Judge
09-03-80	4-Appellees' motion for 30 day extension of stay of mandate (m-3)
09-25-80	Per Curiam order granting appellee's (FED.) motion for a further extension of the stay of mandate and the Clerk is directed not to issue the mandate herein prior to October 10, 1980' SCJ Bazelon, Tamm, CJ, and USDC Judge Parker
10-02-80	4-Appellees' motion to extend stay of mandate to 10/31/80 (m-2)
10-22-80	Per Curiam order that appellees' motion for an extension of stay of mandate is granted and Clerk is directed not to issue mandate prior to 11/3/80; SCJ Bazelon, Tamm, CJ and Parker, USDC Judge for DC
10-22-80	Copy of letter from Clerk, Supreme Court extending the time for filing a petition for writ of certiorari to and including December 29, 1980 in SC No. A-338
10-30-80	4-Appellees' motion for further stay of mandate (m-30)
11-26-80	Per Curiam order that appellees' motion for further stay of mandate is denied; SCJ Bazelon, Tamm, CJ; and USDC Judge Parker
12-12-80	Copy of opinion and certified copy of judgment and bill of costs in the

	amount of $206.00 issued to District Court.
2-11-81	Receipt dated 12/28/80 from the Clerk, District Court for the certified original record (3 vols.) including 1 brown binder, 1 brown expandable folder and one manila envelope and two volumes of transcript
03-27-81	Clerk's order that the Clerk of the District Court shall transmit the Certified Original Record to the Clerk of this Court as promptly as the business of his office permits; and that the Clerk of this Court is directed to certify and transmit to the Supreme Court of the United States the entire record herein forthwith. Upon receipt of the Certified Original Record, from the Clerk of the District Court, the Clerk of this Court shall transmit same to the Supreme Court of the United States.
03-31-81	Notification from Clerk, District Court that jacket is in Federal Record Center and has been ordered on 3/30/81. District Court will transmit record as soon as received
04-01-81	Volume of Original Clerk's File and 1 copy of this Court's opinion transmitted to Clerk, Supreme Court by messenger
04-01-81	Receipt dated 4/1/81 from SC for above material listed in 4/1/81 entry
04-07-81	Certified Original Record (3 vols.); 2 vols transcript under separate cover; 1 manila envelope of exhibits; 1 brown expandable folder; 1 exhibit in brown binder returned from District Court pursuant to order of 3/27/81

04–07–81	Above listed record transmitted to Supreme Court by messenger
04–08–81	Receipt dated 4/1/81 from Supreme Court for above record
05–06–81	Certified copy of order from Clerk, Supreme Court granting the petition for writ of certiorari in SC No. 80–1074 on May 4, 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, INC.
7126 South Jeffrey Boulevard
Chicago, Illinois 60649,

PENELOPE BRACE
5004 F Street
Philadelphia, Pennsylvania 19124,

BRUCE BAILEY
2115 West 10th Place
Gary, Indiana 46404,

KRISTEN HEEMSTRA
200 Second Avenue, SE
Altoona, Iowa 50009,

OLLIE S. GLOVER
4846 State Street
Richmond, California 94804,

JOEL MICHELLE SCHUMACHER
751 Conrad Street
New Orleans, Louisiana 70124,

RAYMOND CLARK
1551 Madison Street
Oakland, California 94612,

KENT G. MCKINNEY
1054 71st Avenue
Oakland, California 94621,

PENNY ORAZETTI
5132 S. W. Erickson
Beaverton, Oregon 97005,

ROBERTA LEDYARD
1105 S. W. 66th Street
Portland, Oregon 97225,

ROBERT BOOTH
24290 Norfolk
Detroit, Michigan 48219,

WILLIAM HARRIS
18952 Santa Barbara
Detroit, Michigan 48221,

JENNIE MCALLISTER
739 A-1 Judd Street
Honolulu, Hawaii 96871,

PLAINTIFFS,

-against-

RICHARD W. VELDE
Administrator
Law Enforcement Assistance
Administration
633 Indiana N.W.
Washington, D.C. 20530,

CHARLES R. WORK
Deputy Administrator for Administration
Law Enforcement Assistance Administration
633 Indiana, N.W.
Washington, D.C. 20530,

HERBERT C. RICE
Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
1016 16th Street, N.W.
Washington, D.C. 20530,

EDWARD H. LEVI
Attorney General of the United States
United States Department of Justice
Constitution and 10th Street, N.W.
Washington, D.C. 20530,

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
633 Indiana Avenue, N.W.
Washington, D.C. 20530,

UNITED STATES DEPARTMENT OF JUSTICE
Constitution and 10th Street, N.W.
Washington, D.C. 20530,

DEFENDANTS.

AMENDED COMPLAINT
CLASS ACTION
CIVIL RIGHTS

I. *NATURE OF THE CLAIM*

1. By this action, plaintiffs seek to redress the violation of their constitutional and statutory rights to nondiscrimination in federally funded law enforcement programs. Plaintiffs allege that the defendants have awarded in excess of one and a quarter billion dollars to law enforcement agencies—federal funding which has been used to discriminate on grounds of race and sex against the plaintiffs and members of their class. Plaintiffs seek *inter alia* to compel the defendants to terminate all funding to discriminatory law enforcement agencies, and in all other ways to enforce their constitutional and statutory civil rights obligations.

II. *JURISDICTION*

2. This action is brought by the plaintiffs on behalf of themselves and all others similarly situated for declaratory relief, injunctive relief, a writ of mandamus and damages against the Law Enforcement Assistance Administration [hereinafter sometimes "LEAA"], the United States Department of Justice [hereinafter sometimes "Justice"], and their executive officers Richard Velde, Charles Work, Herbert Rice and Edward Levi, who have acted unconstitutionally and in excess of their authority, to redress the violation of rights secured to the plaintiffs by, and to require the enforcement of, the nondiscrimination obligations of § 518(c) and § 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3766(c) and § 3757; of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.;* of Executive Orders 11246 and

11375; of the regulations promulgated pursuant to the foregoing, 28 C.F.R. Part 42, and Equal Rights Guidelines, 38 Fed. Reg. 6415 (1973), reissued (1974); of the Due Process Clause of the Fifth Amendment to the United States Constitution; of 42 U.S.C. § 1981; of 42 U.S.C. § 1985 (3); of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and of 42 U.S.C. § 1983.

3. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, § 1337, § 1343(3) and (4), § 1361; by 5 U.S.C. §§ 701 *et seq.*; and by 42 U.S.C. § 2000d–2. The amount in controversy as to each plaintiff exceeds $10,000 exclusive of interest and costs. This Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C. § 2201 and § 2202.

III. *PLAINTIFFS*

4. Plaintiff National Black Police Association, Inc. [hereinafter sometimes "NBPA"], is incorporated in the State of Illinois and maintains its administrative offices in Chicago, Illinois. Plaintiff NBPA and its members have been discriminated against by the defendants through their refusal to terminate LEAA funding to discriminatory law enforcement agencies.

5. Plaintiff Penelope Brace is a female citizen of the United States and a resident of Philadelphia, Pennsylvania. Plaintiff Brace has been discriminated against by the defendants through their refusal to terminate LEAA funding to the Philadelphia Police Department.

6. Plaintiff Bruce Bailey is a black citizen of the United States and a resident of Gary, Indiana. Plaintiff Bailey has been discriminated against by the defendants through their refusal to terminate LEAA funding to the Indiana State Police Department.

7. Plaintiff Kristen Heemstra is a female citizen of the United States and a resident of Altoona, Iowa. Plaintiff Heemstra has been discriminated against by the defendants through their refusal to terminate LEAA funding to the Des Moines, Ames, and Newton Police Departments.

8. Plaintiff Ollie S. Glover is a black citizen of the United States and a resident of Richmond, California. Plaintiff Glover has been discriminated against by the defendants through their refusal to terminate LEAA funding to the Richmond Police Department.

9. Plaintiff Joel Michelle Schumacher is a female citizen of the United States and a resident of New Orleans, Louisiana. Plaintiff Schumacher has been discriminated against by the defendants through their refusal to terminate LEAA funding to the New Orleans Police Department.

10. Plaintiffs Raymond Clark and Kent G. McKinney are black citizens of the United States and residents of Oakland, California. Plaintiffs Clark and McKinney have been discriminated against by the defendants through their refusal to terminate LEAA funding to the Oakland Police Department.

11. Plaintiff Penny Orazetti is a female citizen of the United States and a resident of Beaverton, Oregon, and Plaintiff Roberta Ledyard is a female citizen of the United States and a resident of Portland, Oregon. Plaintiffs Orazetti and Ledyard have been discriminated against by the defendants through their refusal to terminate LEAA funding to the Portland Police Bureau.

12. Plaintiffs Robert Booth and William Harris are black citizens of the United States and residents of Detroit, Michigan. Plaintiffs Booth and Harris have been discriminated against by the defendants through their refusal to terminate LEAA funding to the Wayne County Sheriff's Department.

13. Plaintiff Jennie McAllister is a female citizen of the United States (of Chinese descent) and a resident of Honolulu, Hawaii. Plaintiff McAllister has been discriminated against by the defendants through their refusal to terminate LEAA funding to the Honolulu Police Department.

IV. *DEFENDANTS*

14. Defendant Richard Velde is a white male citizen of the United States and the Administrator of the Law Enforcement Assistance Administration of the United States Department of Justice. In conjunction with the other defendants, he is responsible for insuring that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and for enforcing LEAA's constitutional and statutory civil rights obligations. Defendant Velde is sued in his individual and official capacities.

15. Defendant Charles R. Work is a white male citizen of the United States and the Deputy Administrator for Administration of the Law Enforcement Assistance Administration of the United States Department of Justice. In conjunction with the other defendants, he is responsible for insuring that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and for enforcing LEAA's constitutional and statutory civil rights obligations. Defendant Work is sued in his individual and official capacities.

16. Defendant Herbert C. Rice is a white male citizen of the United States and the Director of the Office of Civil Rights Compliance of the Law Enforcement Assistance Administration of the United States Department of Justice. In conjunction with the other defendants, he is responsible for insuring that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and for enforcing LEAA's constitutional and statutory civil rights obligations. Defendant Rice is sued in his individual and official capacities.

17. Defendant Edward H. Levi is a white male citizen of the United States and the Attorney General of the United States. In conjunction with the other defendants, he is responsible for insuring that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and for enforcing LEAA's constitutional and statutory civil rights obligations. Defendant Levi is sued in his individual and official capacities.

18. Defendant Law Enforcement Assistance Administration of the United States Department of Justice was established by Congress through its enactment of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §§ 3701 *et seq.*, to channel and direct the disbursement of federal monies to nondiscriminatory state, county and municipal governments and to private organizations for law enforcement purposes. LEAA, in conjunction with the other defendants, has distributed more than four billion dollars in LEAA federal funding to various governments and organizations, of which more than one and a quarter billion dollars has been distributed to state, county and municipal law enforcement agencies.

19. Defendant United States Department of Justice, an executive agency of the United States, is responsible for the operation and administration of LEAA, and in conjunction with the other defendants is responsible for insuring that the LEAA funding to state, county and municipal governments is not used in a racially or sexually discriminatory manner.

V. *CLASS ACTION*

20. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of all others similarly situated. The class is composed of all black and female persons who have been discriminated against in employment on grounds of race or sex by law enforcement agencies which have received or currently receive LEAA funding.

21. The class is divided into two subclasses:

a. Plaintiffs NBPA, Bailey, Glover, Clark, McKinney, Booth and Harris represent all black persons who have been discriminated against in employment on grounds of race by law enforcement agencies which have received or currently receive LEAA funding.

b. Plaintiffs Brace, Heemstra, Schumacher, Ledyard, Orazetti and McAllister represent all female persons who have been discriminated against in employment on grounds

of sex by law enforcement agencies which have received or currently receive LEAA funding.

22. The subclasses, whose members number in the thousands, are so numerous as to render joinder of all members impracticable. The questions of law and fact, as to the defendants' failure to insure that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and as to the defendants' failure to enforce their constitutional and statutory civil rights obligations, are common to all members of the subclasses. The plaintiffs, black and female persons and the NBPA representing such persons, will fairly and adequately represent the interests of the subclasses, and their claims are typical of other members of the subclasses. The defendants have acted and more frequently refused to act on grounds generally applicable to the members of the subclasses, thereby making appropriate declaratory, injunctive and mandamus relief with respect to the subclasses and to the class as a whole.

VI. *STATEMENT OF THE CLAIM*

A. *All Plaintiffs and Members of Their Class*

23. Since 1970, more than fifty law enforcement agencies (and/or their executive officers), which have been sued in the United States District Courts for employment discrimination on grounds of race or sex, have had judgments entered against them or have entered into settlements or consent decrees whereby the police department defendants agreed to cease using discriminatory and non-job-related employment practices. The defendants have provided LEAA funding to each of these law enforcement agencies; they have never terminated that funding for civil rights noncompliance; and they have not sought to recover the unlawfully spent LEAA funding.

24. Of the fifty largest law enforcement agencies which receive LEAA funding from the defendants, at least twenty-six have been sued in employment discrimination lawsuits. The defendants have never terminated their LEAA funding to those agencies for civil rights noncompli-

ance nor have they sought to recover unlawfully spent LEAA funding.

25. As recently as October, 1975, the Department of Justice filed employment discrimination lawsuits against the New Jersey State Police, the Michigan State Police, and the South Carolina Highway Patrol. The defendants have provided more than five million dollars in LEAA funding to each of these state law enforcement agencies; they have never terminated their LEAA funding to those agencies for civil rights noncompliance; and their current LEAA funding continues to finance the same discriminatory practices challenged by the Department of Justice.

26. The defendants also provide LEAA funding to *prima facie* discriminatory law enforcement agencies which have not yet been sued. On information and belief, the defendants provide LEAA funding to more than 2000 law enforcement agencies each fiscal year. Yet, a survey undertaken in 1973 by the International Association of Chiefs of Police and the Police Foundation, conducted upon the employment practices of the approximately 700 state, county and municipal law enforcement agencies which employ more than 50 sworn police officers, revealed: (a) that 2% of all sworn police officers were female; (b) that (excluding three police departments in Hawaii and the Metropolitan Washington, D.C. Police Department) approximately 4% of all sworn police officers were minority persons; (c) that 97% of the police departments maintained minimum height requirements; (d) that background investigations were conducted on male applicants by 97% of the police departments, and on female applicants by 77% of the police departments; (e) that nearly all of the police departments used written tests as employment selection criteria and that 31% of the police departments used the Public Personnel Association (I.P.M.A.) Policeman Test; and (f) that 72% of the police departments rejected applicants with a juvenile arrest record without a subsequent conviction.

27. In 1974, another survey, undertaken by the Race Relations Information Center, was conducted on the racial and sexual composition of the 49 state police departments

(Hawaii has no state police force). Responses from the 42 answering state police departments revealed that of all sworn state police officers, 96.6% are white males, 1.5% are blacks, and 0.3% are females. Despite *prima facie* cases of discrimination, the defendants provide LEAA funding to all state law enforcement agencies and have never terminated their LEAA funding for civil rights noncompliance.

28. Although the defendants are authorized to conduct onsite compliance reviews of law enforcement agencies receiving LEAA funding, they have conducted no more than twenty such compliance reviews. Among the sixteen police departments which have been the subjects of such compliance reviews are Cleveland [see ¶ 39 *infra*.], New Orleans [see ¶ 72–76 *infra*.], and Portland [see ¶ 84–91 *infra*.]. Since 1974, only one on-site compliance review has been conducted—that upon the Norfolk (Virginia) Police Department. As a result of their reviews, the defendants have determined that only several of the reviewed police departments were not in civil rights compliance, but even then the defendants refused to terminate their LEAA funding; instead, funding has continued.

29. Prior to 1974, the defendants had a policy of not conducting any pre-award compliance reviews of law enforcement agencies which applied for LEAA funding. Sometime thereafter, defendants adopted a policy indicating that they would conduct pre-award compliance reviews, but only on potential recipients of LEAA discretionary grants in excess of $750,000. In the spring of 1975, this figure was reduced to $250,000. This policy limits pre-award reviews to fewer than one hundred law enforcement agencies.

30. Although the defendants, pursuant to their regulations, have required each LEAA recipient to prepare a written Equal Employment Opportunity Program, ["EEOP"], the defendants have not systematically reviewed the substance of those EEOPs, nor have they ever required that the EEOPs be submitted to the defendants by the recipients. The defendants routinely award LEAA funding without substantive knowledge of the contents of recipients' EEOPs.

31. Although the defendants, pursuant to their Equal Rights Guidelines, prohibit the use of minimum height requirements as employment selection criteria, unless proven to be of "operational necessity," the defendants have never conducted a survey or review to determine the continued use of, operational necessity of, or elimination of such minimum height requirements by LEAA recipients. The defendants routinely award LEAA funding without knowledge of the recipients' continued use of minimum height requirements.

32. Despite the defendants' regulations to the contrary, defendant Velde has maintained that the utilization of women in police service is a "novel question" and "is in need of resolution in a court of law." Pursuant to this policy, the defendants will not terminate LEAA funding to any law enforcement agency which denies sworn police officer employment to women.

33. As of the spring of 1975, the defendants had received more than 300 administrative charges of discrimination, of which more than 90% alleged employment discrimination. The defendants classify the charges of discrimination as active or inactive: charges which indicate that federal litigation has been filed are classified as inactive and are not investigated; of the 133 charges considered by defendants to be active, 25 date back to 1972 or 1973. Several of the police departments named in administrative charges have been determined by the defendants not to be in civil rights compliance, but defendants have not terminated their LEAA funding; instead, LEAA funding has continued.

34. Defendants have never denied or terminated LEAA funding to a law enforcement agency as a potential recipient or recipient of LEAA funding on the grounds that the law enforcement agency was engaged in race or sex discrimination or was otherwise in civil rights noncompliance.

35. Defendants have never conducted an administrative hearing to determine whether a law enforcement agency receiving LEAA funding was in noncompliance with federal nondiscrimination requirements and whether LEAA funding should be suspended or terminated.

B. *Plaintiff National Black Police Association, Inc.*

36. Plaintiff National Black Police Association, Inc. is a national organization whose membership is comprised of local and regional black police organizations (the member organizations, in turn, have memberships comprised of sworn and unsworn black police personnel). Currently the NBPA membership numbers more than fifty incorporated and unincorporated black police organizations.

37. Plaintiff NBPA, directly and through its officers and member organizations, has undertaken vast efforts in pursuit of its objectives of achieving federal enforcement of civil rights laws requiring equal employment opportunity for blacks and women in law enforcement, and of eliminating race and sex discrimination in law enforcement agencies receiving LEAA funding.

38. Primary among these efforts have been plaintiff NBPA's efforts to achieve federal enforcement of civil rights laws:

a. From 1972 to the present, plaintiff NBPA and Renault Robinson, the Executive Director of plaintiff NBPA, sought to disengage the Office of Revenue Sharing from its participation in the discriminatory employment practices of the Chicago Police Department. The results of those efforts are reported in *Robinson v. Shultz*, 7 E.P.D. ¶ 9270 (D.D.C. 1974), supplemental order, 8 E.P.D. ¶ 9832 (D.D.C. 1974), stay denied, 9 E.P.D. ¶ 9861 (D.D.C. 1975), order confirmed, 395 F.Supp. 329 (N.D. Ill. 1975).

b. In February, 1975, plaintiff NBPA sought to participate in a conference hosted by the defendants in Rochester, Michigan for the alleged purpose of reviewing their LEAA civil rights enforcement activities. Although a lawyer for plaintiff NBPA urged defendant Rice to invite Renault Robinson or another official representative of plaintiff NBPA to that conference, he and the other defendants refused to do so.

c. In March, 1975, defendant Velde convened a meeting with defendant Levi and defendant Rice, among others, to discuss the defendants' civil rights enforcement obligations. At that meeting, George Thomas, President of plaintiff

NBPA, urged the defendants to begin to enforce their civil rights compliance obligations. Defendants responded by indicating that they would establish an LEAA advisory council (composed primarily of minority persons); no such council has been formed by defendants.

d. By a letter to defendant Rice, in August, 1975, President Thomas on behalf of plaintiff NBPA again urged the defendants to enforce their civil rights obligations, and in particular to suspend immediately all LEAA funding to the Indiana State Police Department and to the Wayne County Sheriff's Department both of which had been judicially determined in preceding weeks to have been engaged in unlawful employment discrimination. In a reply letter, dated September 3, 1975, defendant Rice indicated that the defendants would not terminate the LEAA funding to the Indiana State Police Department or to the Wayne County Sheriff's Department. President Thomas' responsive letter has not been answered by the defendants.

39. Also primary among plaintiff NBPA's efforts have been the efforts of plaintiff NBPA and its members to eliminate race and sex discrimination in law enforcement agencies receiving LEAA funding:

a. In 1972, the Shield Club, a member of plaintiff NBPA, sought to eliminate the racially discriminatory employment practices of the Cleveland Police Department by filing a federal court lawsuit, the results of which are partially reported in *Shield Club v. Cleveland*, 370 F.Supp. 251 (N.D. Ohio 1973). In 1973, Jean Clayton, a police officer with the Cleveland Police Department and a member of the Shield Club, sought to eliminate the sexually discriminatory employment practices of the Cleveland Police Department by filing a federal court lawsuit, *Clayton v. Cleveland*, C–73–784 (N.D. Ohio, filed July 23, 1973); *Clayton* and three other sex discrimination lawsuits against the Cleveland Police Department have not yet been set for trial.

b. In 1972, the Bridgeport Guardians, a member of plaintiff NBPA, sought to eliminate the discriminatory employment practices of the Bridgeport Police Department by fil-

ing a federal court lawsuit, the results of which are partially reported in *Bridgeport Guardians v. Bridgeport Civil Service Commission*, 354 F.Supp. 778 (D. Conn.), *modified*, 482 F.2d 1333 (2d Cir. 1973) and 497 F.2d 1113 (2d Cir. 1974).

c. In 1972, the Afro American Patrolmen's League, a member of plaintiff NBPA, sought to eliminate the discriminatory promotion practices of the Toledo Police Department by filing a federal court lawsuit, the results of which are partially reported in *Afro American Patrolmen's League v. Duck*, 366 F.Supp. 1095 (N.D. Ohio 1973), *aff'd*, 503 F.2d 294 (6th Cir. 1974).

d. In 1973, the Society of Afro American Police, a member of plaintiff NBPA, sought to eliminate the discriminatory employment practices of the Flint Police Department, by intervening in a lawsuit against the Flint Police Department, the results of which are partially reported in *Holliman v. Price*, 7 E.P.D. ¶ 9069 (E.D. Mich. 1973).

e. In 1973 the Officers for Justice, a member of plaintiff NBPA, sought to eliminate the discriminatory employment practices of the San Francisco Police Department by filing a federal court lawsuit, the results of which are partially reported in *Officers for Justice v. Civil Service Com'n. of San Francisco*, 371 F.Supp. 1328 (N.D.Cal. 1973) and 395 F.Supp. 378 (N.D.Cal. 1975).

f. In August, 1974, the Magnolia State Peace Officers *Association of Louisiana*, a member of plaintiff NBPA, sought to eliminate the discriminatory employment practices of the Louisiana State Police by filing a charge of discrimination with defendant United States Department of Justice, which in turn referred that charge to defendant LEAA.

g. In 1974, the Guardians of Michigan, a member of plaintiff NBPA, sought to eliminate the discriminatory employment practices of the Wayne County Sheriff's Department by filing a state court lawsuit, by filing a federal court lawsuit, and by filing LEAA charges. In 1975, the Guardians of Michigan also sought to eliminate the discriminatory seniority layoff practices of the Detroit Police Department by fil-

ing a federal court lawsuit, a suit which has resulted in a preliminary injunction against the discriminatory layoffs.

h. In 1975, the Guardians of Justice, a member of plaintiff NBPA, sought to eliminate the discriminatory employment practices of the Richmond Police Department by filing LEAA charges and by filing a federal court lawsuit. Seven years earlier, similar efforts by the Guardians resulted in the Richmond Police Department placing letters of reprimand in the personnel files of each Guardian member.

i. During the past three years, the Guardians of Greater Pittsburgh, a member of plaintiff NBPA, has sought to eliminate the discriminatory employment practices of the Pittsburgh Police Department by filing administrative complaints with the Attorney General of the State of Pennsylvania and with the EEOC, and by filing a federal court lawsuit.

j. Also during the past three years, the Louisville Black Police Officers Organization, a member of plaintiff NBPA, has sought to eliminate the discriminatory employment practices of the Louisville Police Department by filing administrative complaints with the Louisville Human Relations Commission, the Kentucky Human Rights Commission, and the EEOC; by filing a revenue sharing complaint with the United States Department of the Treasury; by filing an LEAA complaint with the defendants; and by filing a federal court lawsuit.

40. Despite the efforts of plaintiff NBPA, of its officers and of its members, the defendants have provided LEAA funding to each of the aforementioned discriminatory law enforcement agencies and have refused to terminate that funding.

41. Defendants' refusal to enforce their civil rights obligations, as alleged throughout this Complaint, has caused direct harm and injury to plaintiff NBPA, and to its members:

a. Defendants' refusal to enforce their constitutional and statutory civil rights obligations has wholly frustrated the primary objectives and efforts of plaintiff NBPA.

b. Defendants refusal to enforce their constitutional and statutory civil rights obligations has served to finance and thus to perpetuate the discriminatory and exclusionary employment practices of LEAA recipients, thereby denying equal employment rights to blacks and women.

c. Defendants' refusal to enforce their constitutional and statutory civil rights obligations has served to limit the already limited pool of potential members of plaintiff NBPA and of its member organizations.

d. Defendants' refusal to enforce their constitutional and statutory civil rights obligations has required NBPA member organizations and their members to file administrative complaints and costly lawsuits to obtain their civil rights, to deplete their own financial resources through such complaints and lawsuits, to expose themselves to extra-legal sanctions and harassment for asserting their civil rights, and to jeopardize the member organizations' existence and the individuals' employment by asserting their civil rights.

C. *Plaintiff Brace*

42. Plaintiff Penelope Brace has been discriminated against by the defendants through their provisions of more than eight million dollars in LEAA funding to the Philadelphia Police Department and through their refusal to terminate that funding, despite the defendants' determination nearly two years ago that the Department was not in civil rights compliance.

43. As of November, 1974: the Philadelphia Police Department employed 8,245 sworn police officers, of whom only 74 (or .9%) were female; the Philadelphia Police Department had authorized the employment of 8,276 "policeman" positions open only to males, but had authorized the employment of only 86 "policewoman" positions open to females; thus only 1.0% of all sworn officers could be female.

44. All female officers were and are permanently assigned to the Juvenile Aid Division. No female sworn officer, regardless of rank, is permitted to supervise any male sworn officer on a permanent basis, whether within or without the Juvenile Aid Division.

45. In July, 1973, plaintiff Brace, a "policewoman" employed by the Department since 1965, filed a sex discrimination charge with the defendants against the Philadelphia Police Department. In that charge she requested the defendants to "consider holding up funding for the Police Department in Philadelphia, until such time as my complaint is resolved."

46. In the six months after plaintiff Brace filed her charge of discrimination, the Philadelphia Police Department reassigned her, placed her under surveillance, requested her to report for a special psychiatric examination, denied her promotions to corporal and detective on the grounds that she was not a "policeman"; and initiated dismissal proceedings against her. The defendants were apprised of all of these actions but refused to terminate or even to suspend their LEAA funding to the Philadelphia Police Department.

47. In January, 1974, after several months of investigation and unsuccessful efforts to achieve voluntary civil rights compliance from the Philadelphia Police Department, the defendants formally determined that the Philadelphia Police Department was not in civil rights compliance. In a confirmation mailgram, dated February 1, 1974, to Police Commissioner Joseph O'Neill, defendant Rice stated:

> "LEAA HAS DETERMINED THAT THE PHILADELPHIA POLICE DEPARTMENT HAS FAILED TO COMPLY WITH THE LEAA EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS, 28 C.F.R. 42.201 *ET. SEQ.*, SUBPART D. THE LEAA HAS FURTHER DETERMINED THAT COMPLIANCE WITH THESE REGULATIONS CANNOT BE ACHIEVED BY VOLUNATRY MEANS. ACCORDINGLY THIS MATTER HAS BEEN REFERRED TO THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE FOR CONSIDERATION OF THE INSTITUTION OF APPROPRIATE LEGAL PROCEEDINGS IN ACCORDANCE WITH THE LAW AND REGULATIONS OF THE DEPARTMENT OF JUSTICE AND THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION."

By a letter dated February 4, 1974, defendant Rice similarly advised plaintiff Brace of the defendants' formal determination of noncompliance. The defendants however did not terminate their LEAA funding to the Philadelphia Police Department.

48. On February 12, 1974, plaintiff Brace filed a complaint in the United States District Court alleging unlawful sex discrimination against the City of Philadelphia and its officials, *Brace v. O'Neill*, No. 74–339 (E.D. Pa., filed Feb. 12, 1974). Three days later, on February 15, 1974, plaintiff Brace was fired from her employment by the Philadelphia Police Department. She subsequently was reinstated by the Civil Service Commission, and currently continues to be employed as a "policewoman."

49. Throughout these various proceedings, and despite their referral of the matter to the Department of Justice for consideration of litigation, the defendants refused to initiate the procedures mandated by § 518(c) and § 509 of the Omnibus Crime Control and Safe Streets Act to terminate the LEAA funding to the Philadelphia Police Department. Instead, in the nearly two years since the defendants' determination of noncompliance, the defendants have awarded nearly four million dollars in additional LEAA funding to the Philadelphia Police Department.

50. In a letter to Representative Charles Rangel dated January 10, 1975, defendant Velde attempted to justify the defendants continued LEAA funding, in violation of the defendants' regulations, to the Philadelphia Police Department by stating that "of more immediate consequence" than enforcing civil rights was the "impact upon all citizens of Philadelphia" of providing the LEAA funding, and therefore that "institution of proceedings to defer, suspend, or terminate funding seems inappropriate in this case."

D. *Plaintiff Bailey*

51. Plaintiff Bruce Bailey has been discriminated against by the defendants through their provision of more than three million dollars in LEAA funding to the Indiana State Police Department and through their refusal to terminate that funding, despite a court ordered declaratory judgment

finding the Department's employment practices unlawful under the defendants' regulations.

52. In the history of the Indiana State Police Department, only four blacks have been employed as state troopers. As of August, 1974, the Indiana State Police Department employed 937 uniformed state troopers and higher ranking officers, of whom only three (or .3%) were black. Currently, there are still only three black state troopers. According to the 1970 census, the population of the State of Indiana was 6.9% black.

53. The Indiana State Police Department has engaged in discriminatory recruiting which has preserved its predominately white work force. The Department also has limited the breadth of experience of the few black troopers through discriminatory assignments, thereby limiting the promotion opportunities of the black troopers. Additionally, the Department has used a discriminatory and unvalidated written test which has had the effect of denying employment to a disproportionate number of black applicants. For example, in 1974, the test screened out 100% of the black applicants but only 43% of the white applicants; in 1973, the test screened out 71% of the black applicants but only 43% of the whites. Plaintiff Bailey was one of the victims of the Department's discrimination, having been twice denied employment as a state trooper by the Department.

54. On August 29, 1974, plaintiff Bailey and the Indiana State Conference of Branches of the NAACP filed an employment discrimination complaint in the United States District Court against the Indiana State Police Department and various of its officials, *Bailey v. DeBard*, No. IP 74–458–C (S.D. Ind., filed Aug. 26, 1974). Less than two months after the filing of the complaint in *Bailey v. DeBard*, *supra*, the Indiana State Police Department commenced a training school for a new class of state troopers to fill 52 newly authorized state trooper positions; the entire class of new state troopers was white.

55. During the fall of 1974, the defendants were aware of the discriminatory employment practices of the Indiana State Police Department, but they declined to initiate their

mandated procedures to terminate their LEAA funding to the Department.

56. On July 31, 1975, the Court in *Bailey* v. *DeBard*, *supra*, issued a Memorandum Opinion and Judgment declaring unlawful the Department's use of its written tests and promotion procedures, and the Department's failure to recruit black troopers. The Court specifically held the Department and its officials to be in violation of 42 U.S.C. §§ "2000d *et seq.* . . . and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308." The Court also noted that the Superintendent of the State Police Department, on July 1, 1974, had certified that the Department intended to formulate an Equal Employment Opportunity Program in accordance with the LEAA regulations, 28 C.F.R. §§ 42.301 *et seq.*, but that the EEOP had never been financed much less implemented.

57. In August, 1975, plaintiff Bailey filed a charge of discrimination with the defendants and enclosed a copy of the Court's Memorandum Opinion and Judgment in *Bailey* v. *DeBard*, *supra*. In that charge, plaintiff Bailey noted that the Court had not yet entered any injunctive relief, that the provision of LEAA funding to a discriminatory law enforcement agency was unlawful, and that the defendants were thus required to "suspend all LEAA funding to the Indiana State Police Department and [to] initiate administrative proceedings to recover all LEAA monies already unlawfully spent by the Indiana State Police Department." The defendants refused [see ¶38, *supra*.] and instead have continued to finance the discriminatory employment practices of the Indiana State Police Department.

E. *Plaintiff Heemstra*

58. Plaintiff Kristen Heemstra has been discriminated against by the defendants through their provision of and refusal to terminate their LEAA funding to the Des Moines, Ames, and Newton (Iowa) Police Departments, despite the defendants' knowledge that each of those Departments has discriminatorily denied employment as a police officer to

plaintiff Heemstra in violation of the defendants' Equal Rights Guidelines.

59. Plaintiff Heemstra received an AA degree from Des Moines Area Community College in May, 1974. Her major was law enforcement, and she graduated with a cumulative grade point average of 3.98 (on a scale of 0.00–4.00; 4.00=straight A). Plaintiff Heemstra, a former high school basketball player, stands 5'8-½" in height and weighs 130 lbs.

60. In January, 1974, plaintiff Heemstra was denied employment by the Des Moines Police Department on the grounds that she did not meet the Department's unvalidated 5'9" minimum height requirement and 150 lb. minimum weight requirement. The Des Moines Police Department employs approximately three-hundred and sixty sworn patrol officers, only one (or approximately .3%) of whom is a female.

61. Several years earlier, an Iowa Assistant Attorney General and attorney for the Iowa Civil Rights Commission spoke by phone with Stephen Glassman, a representative of defendant LEAA's Office of Civil Rights Compliance, urged him to investigate the Des Moines Police Department's minimum height and weight requirements, but was advised by Mr. Glassman that no such investigation would be undertaken as Iowa was too low a priority for defendant LEAA's Office of Civil Rights Compliance.

62. In April 1974, plaintiff Heemstra was denied employment as a police officer by the Ames Police Department on the grounds that she did not meet the Department's unvalidated 5'9" minimum height requirement and 160 lb. minimum weight requirement. The Ames Police Department employs approximately 27 sworn patrol officers, of whom none is a female.

63. On four separate occasions, most recently in September, 1974, plaintiff Heemstra has been denied employment as a police officer with the Newton Police Department on the grounds that she did not meet the Department's unvalidated 5'9" minimum height requirement and 150 lb. minimum weight requirement. The Newton Police Depart-

ment employs approximately 25 sworn police officers, of whom none is a female.

64. On May 2, 1975, plaintiff Heemstra filed with the defendants a charge of discrimination against the Des Moines Police Department, the Ames Police Department and the Newton Police Department. Plaintiff Heemstra also charged discrimination against the Pella Police Department and the Urbandale Police Department both of which also denied her employment as a police officer. In her charge, plaintiff Heemstra noted that the receipt of LEAA funding by the respective police departments was unlawful and she urged the defendants to enforce their civil rights obligations immediately.

65. In response to plaintiff Heemstra's charge of discrimination, the defendants have refused to initiate procedures to terminate LEAA funding and have refused even to investigate the discrimination charges. LEAA funding continues.

F. *Plaintiff Glover*

66. Plaintiff Ollie S. Glover has been discriminated against by the defendants through their provision of and refusal to terminate their LEAA funding to the Richmond (California) Police Department. Plaintiff Glover, a ten-year veteran of the Richmond Police Department currently holding the rank of sergeant, has been discriminatorily denied promotion to the rank of lieutenant.

67. The Richmond Police Department employs approximately 178 sworn police officers, of whom only 24 (or approximately 11.3%) are black. According to the 1970 census, the population of the City of Richmond was 36.2% black. Upon information and belief, the current population of the City of Richmond is 40% black. All but three of the black officers hold the entry-level rank of patrolman. Of those black officers above the rank of patrolman, all three are sergeants (of a total of twenty-six sergeants). There are no black captains or lieutenants. It was not until 1967 that any black officer was promoted above the rank of patrolman.

68. The Richmond Police Department has assigned duties and shifts on a racial basis. The Department also has used a discriminatory and unvalidated written test which has had the effect of denying employment to a disproportionate number of black applicants. For example, in November, 1974, the test screened out 70% of the black applicants but only 21% of the white applicants. Other selection criteria include discriminatory and unvalidated height requirements and background investigations. Additionally, the Department uses discriminatory and invalidated promotion examinations for the rank of sergeant and lieutenant which in the fall of 1974 screened out all black applicants, including plaintiff Glover.

69. In April, 1973, a coalition of seven civil rights organizations filed a charge of discrimination with the defendants against the Richmond Police Department at eighteen other California Police Departments. That charge detailed the discriminatory employment practices of the Richmond Police Department, noted that Richmond had received $272,894 in LEAA funding in 1971 and 1972, and sought the "termination or suspension" of LEAA funding. On information and belief, the defendants in response requested information from the Department, but declined to conduct an on-site field investigation. The defendants did not initiate fund termination procedures

70. Since there was no change in the Department's federally funded discriminatory practices, plaintiff Glover, other black officers, and the Guardians of Justice, a member of plaintiff NBPA, filed an employment discrimination complaint in the United States District Court on March 5, 1975, against the City of Richmond and various of its officials, *The Guardians of Justice v. Richmond*, C–75–0439–SW (N.D. Cal., filed March 5, 1975).

71. In July, 1975, plaintiff Glover mailed a charge of discrimination, enclosing a copy of the *Guardians* complaint, to the defendants. In August, 1975, defendant Rice responded to plaintiff Glover by acknowledging the pendency of *Guardians* in the federal court and stating that LEAA "will defer asserting of jurisdiction over the similar subject

matter until there has been a judicial resolution of that matter." In the meantime, the defendants have continued to provide uninterrupted LEAA funding to the Richmond Police Department.

G. *Plaintiff Schumacher*

72. Plaintiff Joel Michelle Schumacher has been discriminated against by the defendants through their provision of and refusal to terminate their LEAA funding to the New Orleans Police Department, despite the defendants knowledge that the Department has discriminatorily denied employment to plaintiff Schumacher in violation of the defendants' Equal Rights Guidelines.

73. Plaintiff Schumacher received an AA degree in Law Enforcement from Delgado Junior College in December, 1974. Plaintiff Schumacher stands 5'5" in height.

74. In the spring of 1974, plaintiff Schumacher applied for employment as a police officer with the New Orleans Police Department; she took and passed the written test, and thereafter was placed on the police eligible list. Plaintiff Schumacher was denied employment, however, on the grounds that she did not meet the Department's unvalidated 5'8" minimum height requirement. The New Orleans Police Department employs approximately 1,139 sworn police officers, only 19 (or approximately 1.7%) of whom are women.

75. In January, 1975, plaintiff Schumacher filed with the defendants a charge of employment discrimination based upon sex against the New Orleans Police Department. Also in January, 1975, plaintiff Schumacher filed a complaint for Intervention in the United States District Court alleging unlawful sex discrimination against the City of New Orleans and its officials, *Williams v. New Orleans*, No. 73–629 (E.D. La., Intervention filed Jan. 3, 1975).

76. Several years earlier, in March of 1973, defendants conducted a compliance review of the New Orleans Police Department. On information and belief, the defendants determined that the Department's 5'8" height requirements was sexually discriminatory and not job related, and that

the Department was not in civil rights compliance. Defendants, however, never terminated their LEAA funding to the Department; instead, they continued to fund the Department's discriminatory practices.

H. *Plaintiffs Clark and McKinney*

77. Plaintiffs Raymond Clark and Kent G. McKinney have been discriminated against by the defendants through their provision of more than one million dollars in LEAA funding to the Oakland Police Department and their refusal to terminate that funding. Plaintiff Clark has been denied promotion and otherwise harassed and plaintiff McKinney has been discharged, all on grounds of race, by the Oakland Police Department.

78. The Oakland Police Department employs approximately 708 sworn police officers, of whom only 91 (or 12.8%) are black. Only one police officer is a woman. According to the 1970 census, the population of the City of Oakland was 34.7% black. On information and belief, the current population of the City of Oakland is approximately 45% black. All but six of the black officers hold the entry-level rank of police officer. Of approximately 125 sergeants, only five (or approximately 4.0%) are black. Of the 32 lieutenants only one (or 3.1%) is black. Of the 12 captains, none is black.

79. The Oakland Police Department uses a discriminatory and unvalidated written test which screens out a disproportionate number of black officers during training and probation for reasons unrelated to successful job performance. And the Department uses discriminatory and unvalidated promotion criteria which screen out a disproportionate number of black officers from promotion.

80. In April, 1973, a coalition of seven civil rights organizations filed a charge of discrimination with the defendants against the Oakland Police Department and eighteen other California Police Departments. That charge detailed the discriminatory employment practices of the Oakland Police Department, noted that Oakland had received $738,672 in LEAA funding in 1971 and 1972, and sought the "termina-

tion or suspension" of LEAA funding. On information and belief, the defendants in response requested information from the Department, but refused to conduct an on-site field investigation. The defendants did not initiate fund termination procedures.

81. In June, 1974, plaintiff McKinney, one of the few Oakland police officers who was a college graduate, was discriminatorily discharged by the Oakland Police Department for reasons unrelated to successful job performance.

82. In August, 1974, plaintiff McKinney and plaintiff Clark, President of the Oakland Black Officers Association, a member of plaintiff NBPA, filed a charge of discrimination with the defendants against the Oakland Police Department. In that charge, plaintiffs Clark and McKinney complained of plaintiff McKinney's discriminatory discharge and enumerated other discriminatory employment practices of the Oakland Police Department. Although the defendants conducted an investigation of that charge, they have not initiated procedures to terminate their LEAA funding to the Oakland Police Department.

83. Subsequent to the filing of the charge with the defendants, the Oakland Police Department suspended plaintiff Clark, caused him to receive an unfavorable supervisory evaluation, denied him promotion through a discriminatory and unvalidated written test, and twice assigned him a swing shift which precluded him from attending two quarters in the law school in which he had been enrolled. Despite the defendants' knowledge of these events, the defendants have continued to provide uninterrupted LEAA funding to the Oakland Police Department.

I. *Plaintiffs Orazetti and Ledyard*

84. Plaintiffs Penny Orazetti and Roberta Ledyard have been discriminated against by the defendants through their provision of more than five million dollars in LEAA funding to the Portland (Oregon) Police Bureau and their refusal to terminate that funding, despite the defendants' determination that the Bureau is not in civil rights compliance.

85. Until 1973: the Portland Police Bureau maintained separate job classifications for female officers, classified as "policewomen," and for male officers, classified as "policemen"; there were only 18 authorized entry-level and promotional positions for policewomen, and approximately 700 entry-level and promotional positions for policemen; policewomen were paid less than policemen (deemed to be "specialists") performing the same work; and all policewomen were permanently assigned to the Women's Protective Division. Currently, the Portland Police Bureau employs approximately 730 sworn police officers, of whom only 27 (or approximately 3.7%) are women.

86. Plaintiff Orazetti became a policewoman with the Portland Police Bureau in 1964 at a time when policewomen were required to have a college degree although policemen needed only a high school diploma or G.E.D. When plaintiff Orazetti complained that entry-level policemen ("specialists") were being paid higher salaries than entry-level policewomen performing the same work, she was threatened with termination. In 1968, when plaintiff Orazetti applied to take the promotion examination for detective, her application was denied on the grounds that she was not a "policeman," and she was assigned to secretarial duties as punishment. In recent years, plaintiff Orazetti has been denied other promotions, denied access to transfers, and in other ways discriminatorily harassed.

87. Plaintiff Roberta Ledyard became a policewoman with the Portland Police Bureau in July, 1971. After graduating number one in her class ahead of the 42 policemen in the Police Academy, plaintiff Ledyard was assigned to the Women's Protective Division although the policemen received assignments throughout the Police Bureau. Like plaintiff Orazetti, plaintiff Ledyard thereafter was denied equal pay, was denied access to transfers and promotions, and was in other ways discriminatorily harassed.

88. In December 972, an investigative team from defendant LEAA conducted a civil rights compliance review of the Portland Police Bureau's employment practices. Plaintiffs Orazetti and Ledyard were told by the investigators that

the filing of administrative charges with defendant LEAA was unnecessary because of the compliance review and because defendant LEAA "would never deny LEAA funds to an agency because of discrimination."

89. In a letter dated January 31, 1973, defendant Rice advised the Portland Civil Service Board that the Portland Police Bureau was not in compliance with the LEAA nondiscrimination regulations, and that four "immediate steps" were "require[d]": (1) that the position of policewoman be abolished; (2) that female officers be given equal opportunity in promotion; (3) that previously denied training be given to female officers to allow them "to fairly compete in promotional examinations"; and (4) that a "new recruiting effort" be undertaken to attract female applicants.

90. Of the four requirements set forth in defendant Rice's determination, only the first has been complied with: the Portland Police Bureau abolished the position of policewoman, but it lowered the pay of all police officers to that previously paid to policewomen; refused to direct recruitment to attract female officers; required applicants to pass discriminatory and unvalidated physical agility tests; refused to provide additional training to female officers; and continued to penalize female officers for lack of patrol experience (denied to women before 1973) in promotional examinations. And although the Bureau appointed plaintiff Orazetti as Project Director of an LEAA funded project, it has paid her a lower salary than the previous Project Director, a male officer.

91. On information and belief, the defendants have unsuccessfully attempted to secure voluntary civil rights compliance from the Portland Police Bureau during the past several years. Despite the Bureau's civil rights noncompliance, the defendants have refused to initiate their mandated fund termination procedures and instead have continued to provide uninterrupted LEAA funding to the Bureau.

J. Plaintiffs Booth and Harris

92. Plaintiffs Robert Booth and William Harris have been discriminated against by the defendants through their

provision of nearly four million dollars in LEAA funding to the Wayne County (Michigan) Sheriff's Department and their refusal to terminate that funding, despite a court ordered preliminary injunction finding the Department's promotion practices to be discriminatory.

93. Plaintiff Robert Booth, a fifteen-year veteran of the Wayne County Sheriff's Department currently holding the entry-level position of patrolman, has been denied promotion to the ranks of detective or sergeant on seven separate occasions, most recently in September, 1974, on the grounds that he failed to rank high enough on the Department's discriminatory and unvalidated promotion criteria. On the basis of the recent examinations administered in the fall of 1974, the Department excluded all black applicants from promotion to detective or sergeant.

94. Plaintiff William Harris, a seventeen-year veteran of the Wayne County Sheriff's Department currently holding the rank of lieutenant, was denied promotion to the rank of deputy inspector in December, 1973, on the grounds that he had failed the Department's discriminatory and unvalidated oral interview. All other black applicants were similarly denied promotion for failing that oral interview.

95. The Wayne County Sheriff's Department has promoted very few blacks to command positions: of 29 detectives, there are only 3 (or 10.3%) black detectives; of 40 sergeants, there are only 7 (or 17.5%) black sergeants; there are only 5 black lieutenants; and of 7 deputy inspectors, there are no black deputy inspectors. According to the 1970 census, the population of Wayne County was 27% black.

96. In November 1974, plaintiffs Booth and Harris, other blacks, and the Guardians of Michigan, a member of plaintiff NBPA, filed an employment discrimination complaint in the United States District Court against various officials of Wayne County, *Reed v. Lucas*, 74–72798 (E.D. Mich. filed Nov. 18, 1974). In July, 1975, the Court granted plaintiff's motion for a preliminary injunction against the discriminatory promotion practices and ordered that "one of every

two persons promoted to detective and to deputy inspector must be a member of the black race."

97. Earlier, in April, 1975, one of the *Reed* plaintiffs filed with the defendants an LEAA charge of discrimination detailing the unlawful employment discrimination in the Wayne County Sheriff's Department. Upon information and belief, defendants refused to conduct an investigation into the charge filed against the Wayne County Sheriff's Department.

98. In August, 1975, plaintiff Booth, on behalf of himself and the Guardians of Michigan, of which he is Vice President, filed with the defendants another charge of discrimination against the Wayne County Sheriff's Department. Plaintiff Booth enclosed a copy of the Court's Memorandum Opinion and Order in *Reed v. Lucas*, *supra*, and urged the defendants to "immediately suspend all LEAA funding to the Wayne County Sheriff's Department and [to] immediately initiate proceedings to recover all unlawfully spent LEAA monies." Although the defendants docketed the charge, they have refused to investigate the charge [see ¶38 *supra*] and have refused to initiate proceedings to suspend, terminate or recover the LEAA funding. The defendants continue to provide uninterrupted LEAA funding to the Wayne County Sheriff's Department.

K. *Plaintiff McAllister*

99. Plaintiff Jennie A. McAllister has been discriminated against by the defendants through their provision of LEAA funding and refusal to terminate that funding to the Honolulu Police Department, despite the defendants' knowledge that the Department discriminatorily denied employment to plaintiff McAllister in violation of the defendants' Equal Rights Guidelines.

100. Plaintiff McAllister, who is studying toward her AA degree in police science, is working toward a brown belt in Karate, and stands 5'4" in height, was denied employment as a police officer with the Honolulu Police Department in June, 1974, solely because she did not meet the Department's discriminatory and unvalidated 5'8" height requirement.

The Honolulu Police Department employs approximately 1461 sworn police officers, of whom only 10 (or approximately .7%) are women.

101. In July, 1975, plaintiff McAllister filed a complaint in the United States District Court charging Honolulu officials with sex discrimination in violation of defendant LEAA's Equal Rights Guidelines, 38 Fed. Reg. 6415 (1973) reissued (1974), *McAllister* v. *Honolulu*, Civ. No. 75–248 (D. Haw., filed July 17, 1975).

102. Several years earlier, in 1973, in response to a sex discrimination charge filed with the defendants by Honolulu police officer Lucile Abreu, the defendants determined that the Department's minimum height requirement was discriminatory and not job related, and that the Department thus was not in civil rights compliance. The defendants, however, never terminated their LEAA funding to the Honolulu Police Department; instead, the defendants continued to provide uninterrupted LEAA funding.

VII. *IRREPARABLE INJURY*

103. Plaintiffs and all others similarly situated have suffered, and will continue to suffer, irreparable injury, economic loss, humiliation, and denial of their constitutional and statutory rights as a result of the defendants' failure to insure that LEAA funding is not used in a racially and sexually discriminatory manner by law enforcement agencies and as a result of the defendant's failure to enforce their constitutional and statutory civil rights obligations against law enforcement agencies. Plaintiffs have no adequate, plain or speedy remedy at law.

VIII. *FIRST CAUSE OF ACTION*

104. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by § 518(c) and § 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3766(c) and § 3757.

IX. *SECOND CAUSE OF ACTION*

105. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plain-

tiffs and to the members of the class by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*

X. *THIRD CAUSE OF ACTION*

106. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by Executive Orders 11246 and 11375.

XI. *FOURTH CAUSE OF ACTION*

107. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by the Omnibus Crime Control and Safe Streets Act, as amended; by Title VI of the Civil Rights Act of 1964; by Executive Orders 11246 and 11375; and by the federal regulations promulgated pursuant thereto, 28 C.F.R. Part 42, and the Equal Rights Guidelines, 38 Fed. Reg. 6415 (1973), reissued (1974).

XII. *FIFTH CAUSE OF ACTION*

108. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by the Due Process Clause of the Fifth Amendment to the United States Constitution.

XIII. *SIXTH CAUSE OF ACTION*

109. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by 42 U.S.C. § 1981.

XIV. *SEVENTH CAUSE OF ACTION*

110. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by 42 U.S.C. § 1985(3).

XV. *EIGHTH CAUSE OF ACTION*

111. Defendants, acting unconstituionally and in excess of their authority, have violated rights secured to the plain-

tiffs and to the members of the class by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

XVI. *NINTH CAUSE OF ACTION*

112. Defendants, acting unconstitutionally and in excess of their authority, have violated rights secured to the plaintiffs and to the members of the class by 42 U.S.C. § 1983.

XVII. *PRAYER FOR RELIEF*

WHEREFORE, plaintiffs pray that this Court:

A. Assume jurisdiction of this cause.

B. Issue an order determining that this cause may proceed as a class action.

C. Enter a declaratory judgment declaring the acts, practices and omissions of the defendants to be unconstitutional and in excess of their authority, issue a preliminary and permanent injunction restraining the defendants from acting unconstitutionally and in excess of their authority, and issue a writ of mandamus requiring the defendants to act constitutionally and within their authority—all as mandated by § 518(c) and § 509 and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3766(c) and § 3757; by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*; by Executive Orders 11246 and 11375; by the regulations promulgated pursuant to the foregoing, 28 C.F.R. Part 42, and the Equal Rights Guidelines, 38 Fed. Reg. 6415 (1973) reissued (1974); by the Due Process Clause of the Fifth Amendment to the United States Constitution; by 42 U.S.C. § 1981; by 42 U.S.C. § 1985(3); by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and by 42 U.S.C. § 1983.

D. Issue a preliminary and permanent injunction and a writ of mandamus requiring the defendants:

1. To immediately suspend and terminate all LEAA funding to the Indiana State Police Department, the Wayne County Sheriff's Department, and all other law enforce-

ment agencies which have been judicially determined to be in violation of federal civil rights laws.

2. To immediately initiate administrative hearings to suspend and terminate LEAA funding to the Richmond Police Department, the Oakland Police Department, the Philadelphia Police Department, the Des Moines, Ames and Newton Police Departments, the New Orleans Police Department, the Portland Police Bureau, the Honolulu Police Department, and all other law enforcement agencies which have been or should have been determined by defendant LEAA to be in civil rights non-compliance and which have not voluntarily complied with the civil rights laws.

3. To immediately initiate proceedings to recover all LEAA monies unlawfully spent by the above law enforcement agencies.

4. To award LEAA funding only to those departments which have been determined by the defendants to be in civil rights compliance and to place all pending LEAA funding in escrow until there has been a determination of civil rights compliance.

E. Award to plaintiffs and to the members of the class, as against defendants Velde, Work, Rice and Levi, $10,000,000 in compensatory damages for injuries suffered by them and $10,000,000 in punitive damages for injuries suffered by them, as a result of defendants' willful and malicious refusals, which are unconstitutional and in excess of their authority as set forth above, to insure that LEAA funding is not awarded to governmental law enforcement agencies engaged in racially or sexually discriminatory employment practices, and as a result of defendants' willful and malicious refusals (which are unconstitutional and in excess of their authority) to enforce their federally mandated civil rights enforcement obligations.

F. Order the defendants to take such other appropriate and immediate action as may be necessary to redress the effects of the defendants' unlawful acts, practices and omissions as set forth herein.

G. Award plaintiffs costs and attorneys fees incurred in the prosecution of this action.

H. Retain jurisdiction of this action until the defendants have fully complied with the Orders of this Court.

I. Award such other and further relief as this Court may deem just and proper.

Dated: Washington, D.C.
January 2, 1976

Respectfully submitted,

E. RICHARD LARSON
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American Civil Liberties Union Foundation
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND A WRIT OF MANDAMUS

Upon the attached Affidavits and exhibits attached thereto, and upon all prior proceedings in this action, plaintiffs move this court for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and for a writ of mandamus pursuant to 28 U.S.C. § 1361 ordering the defendants, their agents and employees:

(1) To initiate administrative procedures to terminate LEAA funding to the Philadelphia Police Department and to other law enforcement agencies which the defendants have determined to be in civil rights noncompliance; and,

(2) To investigate complaints and to make determinations of civil rights compliance or noncompliance with regard to the Richmond California Police Department and to other law enforcement agencies regardless of the pendency of local proceedings against such law enforcement agencies.

Plaintiffs request an oral hearing on this Motion pursuant to Rule 1–9(e) of the Civil Rules of this Court.

/s/ _____
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KATHLEEN WILLERT PERATIS
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Dated: Washington, D.C.
January 14, 1976

UNITED STATES DISCTICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

Judge Corcoran

PROPOSED ORDER

NATIONAL BLACK POLICE ASSOCIATION, ET AL., PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Upon plaintiffs' motion for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and for a writ of mandamus pursuant to 28 U.S.C. § 1361, upon the affidavits and exhibits attached thereto, and upon all prior proceedings in this action,

THE DEFENDANTS, THEIR AGENTS AND EMPLOYEES ARE HEREBY ORDERED:

(1) To initiate administrative procedures to terminate LEAA funding to the Philadelphia Police Department and to other law enforcement agencies which the defendants have determined to be in civil rights noncompliance; and,

(2) To investigate complaints and to make determinations of civil rights compliance or noncompliance with regard to the Richmond California Police Department and to other law enforcement agencies regardless of the pendency of local proceedings against such law enforcement agencies.

SO ORDERED

Dated:

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

E. RICHARD LARSON, being first duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in the above-styled action. I submit this Affidavit in support of Plaintiffs' Motion for a Preliminary Injunction and a Writ of Mandamus.

2. Approximately one year ago I began to acquaint myself fully with the manner in which the defendants in this action carried out their federal civil rights enforcement mandate. During this investigation I obtained a variety of information and documents from government officials and civil rights lawyers, and through the Freedom of Information Act from the defendants.

THE DEFENDANTS' CIVIL RIGHTS ENFORCEMENT WITH REGARD TO THE PHILADELPHIA POLICE DEPARTMENT

3. On January 22, 1975, in the office of United States Representative Charles B. Rangel, I reviewed numerous

documents pertaining to the defendants' civil rights enforcement policies and practices.

a. In one document, a letter dated May 21, 1974 to Mr. Rangel from Donald E. Santarelli, then Administrator of LEAA, Mr. Santarelli noted that LEAA had found "systematic" sex discrimination in the selection, assignment, and promotion practices of the Philadelphia Police Department, and that LEAA had found "retaliation and harassment" by the Philadelphia Police Department against Plaintiff Penelope Brace because she had filed a complaint with LEAA. (See Exhibit A attached hereto, pages 19–21, *infra.*). Mr. Santarelli also stated that LEAA had "determined that many of the employment policies and practices of the Philadelphia Police Department were discriminatory based upon sex," but that "no formal administrative hearings have been held." Instead, on "January 28, 1974, a formal referral of this matter was made to the Civil Rights Division of the U.S. Department of Justice." (See Exhibit A attached hereto, pages 19–20, *infra.*).

b. In another document, a letter dated January 10, 1975 to Mr. Rangel from defendant Richard W. Velde, Administrator of LEAA, Mr. Velde noted that "no formal administrative hearing was held by LEAA," that "LEAA funds are still going to the Philadelphia Police Department," that indeed "two $1 million discretionary awards were recently made," and that "institution of proceedings to defer, suspend, or terminate funding seems inappropriate in this case [because] the impact upon all citizens of Philadelphia of withdrawing the additional police protection being provided was deemed to be on balance of more immediate consequence." (See Exhibit B attached hereto, pages 40–41 *infra.*).

4. On August 11, 1975, I served a Freedom of Information Act request upon defendant Herbert C. Rice, current Director of LEAA's Office of Civil Rights Compliance, requesting *inter alia* documents pertaining to LEAA's civil rights enforcement against the Philadelphia Police Department. Enclosed with a return letter dated August 21, 1975 from Mr. Rice were numerous such documents.

a. In one document, a letter dated January 29, 1974 to the Chief Deputy City Solicitor of Philadelphia from J. Stanley Pottinger, Assistant Attorney General of the United States, Mr. Pottinger noted that "the Attorney General had authorized the filing of a civil action against the Philadelphia Police Department." (See Exhibit C attached hereto, pages 46–47, *infra.*).

b. In another document, a mailgram dated February 1, 1974 to Philadelphia Police Commissioner Joseph O'Neill from defendant Herbert C. Rice, Mr. Rice formally confirmed: THAT LEAA HAS DETERMINED THAT THE PHILADELPHIA POLICE DEPARTMENT HAS FAILED TO COMPLY WITH THE LEAA EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS, 28 C.F.R. 42.201 ET SEQ., SUBPART D. THE LEAA HAS FURTHER DETERMINED THAT COMPLIANCE WITH THESE REGULATIONS CANNOT BE ACHIEVED BY VOLUNTARY MEANS. (See Exhibit C attached hereto, page 48, *infra.*).

c. In a third document, a letter eight months later, dated September 20, 1974, to the Managing Director of the City of Philadelphia from LEAA Regional Administrator Cornelius Cooper, Mr. Cooper stated that the "draft EEO program developed by the Philadelphia Police Department" violated eleven separate sections of the LEAA regulations, 28 C.F.R. §§ 42.301 *et seq.* (See Exhibit C attached hereto, pages 49–50, *infra.*).

d. In an apparently subsequent document, an undated letter to the Managing Director of the City of Philadelphia from defendant Charles R. Work, then LEAA's Deputy Director for Administration, Mr. Work stated that "continuation funding" of the two one million dollar grants had been "found to be programatically acceptable" and that "final approval of these grants is being considered in the context of satisfactory progress in the suit filed by the United States Department of Justice." (See Exhibit C attached hereto, pages 51–52, *infra.*).

5. On August 7, 1975, I served a Freedom of Information Act request upon defendant Richard Velde requesting *in-*

ter alia an enumeration of LEAA funding to the Philadelphia Police Department. Enclosed with a return letter dated August 21, 1975, was a computer printout of approximately 400 pages indicating in part that the Philadelphia Police Department had received in excess of eight million dollars in LEAA funding. (See Exhibit D attached hereto, pages 53–58 *infra.*).

6. During the fall and winter of 1975, I had several conversations with Nathan Dodell, attorney for the defendants, and with Andrew Strojny, LEAA's Chief of the Compliance Review Division. Both Mr. Dodell and Mr. Strojny have advised me that no administrative hearing procedures have been commenced against the Philadelphia Police Department to terminate LEAA funding and that LEAA grants have continued to be approved for the Philadelphia Police Department.

THE DEFENDANTS' CIVIL RIGHTS ENFORCEMENT WITH REGARD TO THE RICHMOND CALIFORNIA POLICE DEPARTMENT

7. In the Spring and Summer of 1975, I received from plaintiff Ollie Glover and from various organizations, including the Center for National Policy Review in Washington, D.C. and Public Advocates, Inc. in San Francisco, copies of the administrative complaint filed with the defendants in April, 1973, by a coalition of seven civil rights organizations against the Richmond Police Department and against eighteen other law enforcement agencies in California. That complaint outlined the discriminatory practices of the Richmond Police Department and of other police departments, and requested the "termination, or suspension as appropriate, of funding for all LEAA recipients" which were not in compliance with LEAA's civil rights regulations. (See Exhibit E attached hereto, pages 24, 69–88, *infra.*).

8. In July, 1975, I received a copy of a letter dated July 14, 1975 to defendant Herbert C. Rice from William H. Hastie, Jr., attorney for the complainants, wherein he recounted: that LEAA initially contacted all nineteen police

departments; that on-site investigations were conducted only upon the Berkeley, San Diego and San Francisco Police Departments; that subsequent negotiations occurred concerning only the San Francisco Police Department; and that no further action was taken by LEAA with regard to the other police departments—thus virtually no civil rights enforcement was undertaken with regard to the Richmond Police Department. (See Exhibit F attached hereto, pages 89–90, *infra.*).

9. In July, 1975, plaintiff Ollie Glover filed with the defendants a charge of discrimination against the Richmond Police Department. By letter dated August 22, 1975 to Sergeant Glover from defendant Herbert C. Rice, Mr. Rice stated that LEAA "will defer asserting of jurisdiction" in view of local litigation pending against the Richmond Police Department. (See Exhibits A and B attached to the Affidavit of Ollie Glover, pages 137–142 *infra.*).

10. Some months earlier, in January, 1975, as modified in April, 1975, I served a Freedom of Information Act request upon defendant Herbert C. Rice requesting *inter alia* documents pertaining to LEAA complaint procedures and to compliance reviews. Enclosed with a return letter dated May 19, 1975 from Mr. Rice were numerous such documents. (See Exhibit G attached hereto, pages 91–116, *infra.*).

a. The documents indicate the sixteen law enforcement agencies which have been subject to LEAA compliance reviews; the Richmond Police Department is not among such law enforcement agencies. (See Exhibit G attached hereto, pages 96–98, *infra.*).

b. The documents also indicate that administrative complaints, filed with LEAA against law enforcement agencies where local litigation is pending or even contemplated, are deemed "Inactive." (See Exhibit G attached hereto, pages 111–116, *infra.*).

11. On August 11, 1975, I served a Freedom of Information Act request upon defendant Richard Velde requesting *inter alia* an enumeration of LEAA funding to the Richmond Police Department. Enclosed with a return let-

ter dated August 21, 1975, was a computer printout of approximately 400 pages indicated in part that the Richmond Police Department had received in excess of half a million dollars in LEAA funding. (See Exhibit H attached hereto, pages 117–125, *infra.*).

THE DEFENDANTS' CIVIL RIGHTS ENFORCEMENT

12. In November, 1975, the United States Commission on Civil Rights published its report on Justice, LEAA and their civil rights enforcement policies and practices: *The Federal Civil Rights Enforcement Effort*, Vol. VI, To Extend Federal Financial Assistance, 270–373 (November, 1975). That report, too bulky to be attached hereto, is being filed with plaintiffs' motion papers.

/s/_____
E. RICHARD LARSON

Sworn to before me this day of January, 1976.

/s/_____
BELLA GREENE
Notary Public

LARSON AFFIDAVIT
EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
Washington, DC 20530

May 28, 1974

The Honorable Charles B. Rangel
House of Representatives
Washington, D.C. 20515

Dear Congressman Rangel:

This is in further response to your recent letter regarding the civil rights compliance programs of the Law Enforcement Assistance Administration.

Our responses to your nine questions follow. Please let me know if you wish us to furnish additional information.

1. *On February 10, 1972 a United States District Court in Alabama ordered the Alabama State Police to hire one black trooper for every white trooper hired until the force was 25 percent black. In December 1973 the Southern Poverty Law Center filed a brief in that U.S. District Court charging that the Alabama State Police have failed to follow the court order and that only 25 blacks have been hired. Of that number only 15 remain on the force.*

(a) *Is LEAA, either through SPA grants or "Discretionary Grants," still funding the Alabama State Police?*

The LEAA Grants Management Information System indicates that the Alabama Department of Police Safety has received $402,617 in block grants funds in FY 1972 and FY 1973. No discretionary grants were made.

(b) *If so, is any review of this police force's compliance with the 1972 court order under way?*

The Court is reviewing the compliance of the Alabama State Police with its order. LEAA's Office of Civil Rights Compliance is in touch with Civil Rights Division, Department of Justice as to the progress of

the litigation and are presently awaiting a copy of the most recent Circuit Court decision for review.

(c) *If the Alabama State Police is found by the court not to be in compliance with the earlier court order will LEAA terminate its funding to the Alabama State Police?*

If the Court should find noncompliance with its orders, LEAA will, of course, review the matter, to determine whether deferral, suspension, or termination of funding would be an appropraite remedy.

2. *It is our understanding that in late 1973 LEAA sent copies of its EEO–4 form to state and local police and sheriff's departments to be filled out and returned to LEAA's office in Washington. Will you make copies of the completed EEO–4 forms in your possession available to interested congresspersons and organizations upon request?*

In 1972 and 1973 LEAA sent its 2000/1 Form to state and local police and sheriff's departments to be filled out and returned to LEAA. The Form was somewhat similar to the EEOC Form EEO–4. We have made copies of the completed forms available upon request. However, please note that the reporting form was only sent to funded agencies as of June 1972, and that the response to two mailings of the form was incomplete.

3. *Would you please let me know how many pending complaints of racial or sex discrimination LEAA has at present, with the name of the law enforcement agency complained about. It will not be necessary for you to give me the name of the complaining person, or organization, if your office keeps the name of the complainant confidential. However, if the name of the complaining person or organization is divulged to the agency complained of, I would like you to give that name to me as well.*

OCRC is investigating allegations of discriminatory employment practices in each of the cases listed in attachment #1. Pursuant to an intra Department of Justice agreement, police brutality and correctional institution complaints are initially processed by the Civil Rights Division. Complaints of discrimination against educational institutions are

referred to the Office of Civil Rights of HEW for initial investigation. When investigative findings of discrimination are made, that Division will coordinate with OCRC on obtaining compliance. Similar procedures are followed where complaints are referred to OCR at DHEW for investigation (medical and educational institutions).

Disclosure of the name of the complaining party in these cases might prejudice on-going negotiations seeking amicable resolution of the complaint. Further, it seems reasonable that the disclosure of the name of the person complaining to the agency complained about, does not relieve LEAA of the responsibility of protecting the general confidence of the identity of persons filing complaints with it.

4. *In your response to my earlier inquiries concerning LEAA's civil rights enforcement effort (your response dated September 14, 1973) you stated that you were analyzing the impact of police services in fourteen municipal police departments, a sheriff's department, and a state highway patrol. Would you please send me your survey forms used for this study along with the study's findings, identifying the specific police agencies with the appropriate findings.*

The Office of Civil Rights Compliance conducted civil rights compliance reviews in fifteen police agencies. We have indicated on the following pages several examples of recommendations we have made relating to allocation of services, where it appeared that some action by the agency in question would be necessary for the agency to voluntarily come into compliance.

Because negotiations are now pending with the agencies listed, we do not feel free to identify the particular agency in which specific recommendations have been made.

Some of the reviews in question were with staff assistance from the Civil Rights Division of the Department of Justice.

Compliance Reviews of Police Agencies
Conducted by OCRC

1. Dallas, Texas, Police Department
2. St. Louis, Missouri, Police Department

3. Cleveland, Ohio, Police Department
4. Portland, Oregon, Police Department
5. Baltimore, Maryland, Police Department
6. Phoenix, Arizona, Police Department
7. New Orleans, Louisiana, Police Department
8. Atlanta, Georgia, Police Department
9. South Carolina State Highway Patrol
10. Clark County, Nevada, Sheriff's Department
11. San Diego,California, Police Department
12. Newark, New Jersey, Police Department
13. Denver, Colorado, Police Department
14. Berkeley, California, Police Department
15. San Francisco, California, Police Department

Below are listed sample recommendations made in some of these compliance reviews:

1. *Delivery of Services*

Based on the data we have received, some disparity was noted between districts for the reported police arrivals (TC6 calls) for the call categories of burglary, injured person, criminal assault and felony in progress. However, as noted in a letter from the Police Department, firm conclusions cannot be drawn because departmental procedures have not required notification to the dispatcher of all arrivals at the scene.

Therefore, we suggest that the Police Department gather and review the data necessary to ascertain if in fact, inequitable treatment it accorded some segments of the population.

. . .

2. *Community Services*

The team reviewed a manpower allocation plan of the Department and determined that services were responsive to area needs as determined by numbers of requests for police services. The response times, as we were able to interpret them, indicated that the community is receiving equitable

services, and that in fact, higher crime areas tend to receive quicker responses to requests for service.

It is our understanding that the Department is elaborating a program to more accurately interpret services by analyzing tires of reception, dispatch, arrival of vehicle and termination of service. We encourage the rapid implementation of this program.

. . .

3. *Delivery of Services*

A disparity in response times was not noted for different areas of the community, in part, because the Department does not record the times the request for service is received.

. . .

4. *Services*

It is our understanding that the deployment of services by the Police Department has been determined by population density, crime rate, and the number of calls for service. We further understand that as data accumulates, the Police Department will be better able to ensure that requests for services throughout the city are responded to in an equitable manner.

Recommendation

We urge the Police Department to continue its analysis and evaluation of data, as it is accumulated, to determine if services are equitably provided.

. . .

5. *Delivery of Services to Community*

An analysis of services performed by the Police Department was limited because of the lack of recorded data and an overtaxed police force.

Presumably, the current resource allocation study will result in a more effective and equitable distribution of services. We recommend that as part of present and future resource allocation studies, provisions be made to record data in such a manner that it can be verified that areas of the

community identifiable by their racial or ethnic composition are receiving equitable services.

. . .

6. *Service to Community*

Lack of records made it difficult for the review team to make a determination that police services are equitably administered to the community. Therefore we recommend:

A. That the Police Department develop and maintain information that would indicate the response time in individual districts, to determine if services are equitably distributed throughout the city. This data would be a natural part of an improved dispatching and record keeping system understood to be presently under consideration.

B. That records be developed that will make it possible to determine that the quality of services is equitable. This probably could best be accomplished by developing a procedure under which the call for service card is related to the report and resolution records.

. . .

7. *Service to Public*

Police services to the community appear to be equitably administered under the new Plan. As this Plan is adopted, or should you adopt a different patrol system, we recommend that you give priority to the evaluation of services to the community to ensure equity in the provision of police service to the public by race and ethnicity.

. . .

8. *Service to Public*

Based on the data available to us, a comprehensive analysis of selected areas, representing diverse socio-economic levels, ethnic and racial groupings, indicate that police services were equitably administered. We base this conclusion on a computerized study of response times, utilizing statistical methods to analyse the variances between request time and dispatch time for the various communities. However, a conclusive evaluation of services cannot be

made because there is no way to protect the number of calls which might be made were it not a fact that the communities have no representative at the switchboard to receive their calls.

. . .

We are requesting that within thirty days of receipt of this letter, you forward us your plan for carrying out the recommendations outlined in this letter, including a reasonable time frame for implementation. Upon receipt of your plan, we will set mutually agreeable goals which would then be reviewed for progress in late 1974.

Members of our team are available for consultation and review of these recommendations, if requested. For this purpose, your representative may wish to contact the OCRC staff. I am, of course, available to discuss this matter with you.

Sincerely,

HERBERT C. RICE, Director
Office of Civil Rights Compliance

* * * * *

Please note in reviewing these recommendations that the OCRC Review Staff is aware that a rapid response time in getting to a minority neighborhood may evidence an overzealous enforcement policy. We have attempted to determine if this is the case through community interviews among minorities.

5. *In March 1973 your agency promulgated two administrative guidelines governing equal employment opportunity. These guidelines required LEAA grantees to, (1) eliminate discriminatory height requirements unless they could be shown to be necessary for successful job performance, and (2) required that LEAA grantees adopt an EEO plan.*

(a) *What follow up studies has LEAA undertaken to assure that all grantees are in conformity with the guidelines?*

(b) *What procedures has LEAA adopted to assure that law enforcement agencies that have failed to eliminate discriminatory height requirements, and/or*

failed to file EEO programs and are not certified as such are not receiving LEAA grants?

5. (a & b)

LEAA has provided technical assistance to state planning agencies, regional planning units and recipient agencies to assist them in preparation of appropriate EEO programs. Upon conduct or reviews or investigations of complaints we make recommendations concerning minimum height requirements, when appropriate.

Beyond this, the LEAA Office of Inspector General routinely checks on the existence and scope of EEO programs in the discharge of its audit function.

Attachment #2 is a copy of training materials used in the training of criminal justice planning unit and operational personnel. As indicated in the attached program, instruction was given at seven regional and state meetings in civil rights compliance matters affecting the LEAA program, with particular emphasis on the development of EEO programs in accordance with the LEAA guidelines. Further, LEAA will soon issue a manual, designed as a technical assistance aid in the development of EEO programs.

Beyond this, the Marquette Center for Criminal Justice Agency Organization and Minority Employment Opportunities, and the International Association of Official Human Rights Agencies (IAOHRA), provide through LEAA funded projects, technical assistance to state planning agencies, regional planning units, and state and local criminal justice agencies, and technical assistance in civil rights compliance problems arising under the LEAA program.

Taken together, LEAA feels it has undertaken and is implementing a comprehensive program to assure compliance with the criminal justice planning and operational community with the civil rights compliance requirements of the LEAA program, particularly those relating to the LEAA Guidelines requiring the preparation of Equal Employment Opportunity Programs as a condition of the award of LEAA funds.

Affected recipient agencies are not required to file their EEO programs with either the SPA or with LEAA. They must certify that they have prepared such programs prior to receipt of new awards of LEAA monies, either block or discretionary. It is the obligation of the SPA or the LEAA regional office to determine that the certificate is on file prior to funding.

5. (c) *Would you forward to me a list of law enforcement agencies that are scheduled for civil rights compliance reviews in fiscal year 1974, if such a list exists?*

The only law enforcement agency scheduled for review in FY 1974 is the Norfolk Police Department. A compliance review of that Department is presently being conducted by an OCRC review team.

5. (d) *Would you forward to me a list of law enforcement agencies for which you have done civil rights compliance reviews and your findings in such reviews of those agencies?*

In the response to Question Number Four we have listed police agencies where reviews have been conducted. We are presently completing the review in the Norfolk, Virginia, Police Department. In addition, we have conducted reviews in the Rhode Island Department of Corrections and the Union Correctional Institution in Raiford, Florida.

5. (e) *How many administrative and/or court proceedings have been brought against violators of either guideline?*

None.

5. (f) *How many law enforcement agencies have complied with these guidelines after threats by LEAA to commence fund termination proceedings?*

Threats by LEAA to begin fund termination proceedings have not been necessary because voluntary compliance with the guidelines has been achieved after discussion and negotiation with the law enforcement agencies.

To the best of our knowledge, recipient agencies have prepared EEO plans to the extent that they have adequate data to do so.

We have no specific knowledge as to the scope of compliance with the height guideline. Following complaint investigations or compliance reviews, a number of recipient law enforcement agencies have lowered significantly, or dropped entirely minimum height requirements.

6. *On December 21 I was informed that LEAA had made a grant to the City of Baltimore, Maryland public schools for $54,000. The purpose of this grant was allegedly to administer a test to grammer school children to determine their possible propensity to become juvenile delinquents.*

With respect to Baltimore Public School Project, it is our understanding that the Maryland SPA granted the Baltimore School Board $54,000 to run a project called Early Identification of Pre-delinquent and Delinquent Behavior. The main purpose of this project was to develop behavior problems which can be related to subsequent pre-delinquency and/or delinquency.

The project's staff included four professionals with considerable experience and a clerk stenographer. Basically, the Rosenburg First Grade Screening Test, the Pupil Behavior Inventory Test, and the California Test of Personality were administered to children throughout the school system. The premise was that through the combination of objective screening devices and standardized tests, a system could be devised which would predict school maladjustment and pre-delinquent behavior with an approximate 75 percent accuracy. The project was scheduled to expire last December 31. The school board asked for refunding, but it was denied.

6. (a) *Does LEAA have any other grants for such studies currently runing? Where?*

VISA, or Volunteers Influencing Student Achievement, is a $120,000 project funded by the California SPA with block grant funds "to help juveniles who develop any type of personal problem which appears and affects their school work." The program operates only in the Placentia School District. There are 20 schools in the program. Parents must sign an authorization form.

We have been able to uncover no other program similar in thrust to the Baltimore project.

6. (b) *Has LEAA given any similar grants to educational institutions or school districts in the past? Where? Are there any reports?*

There are no records indicating that LEAA has given any similar grants to educational institutions or school districts in the past.

6. (c) *Does LEAA have any guidelines specifically governing this type of grant?*

LEAA has not promulgated guidelines specifically governing this type of grant. It should be noted that the 1973 amendments to the Omnibus Crime Control and Safe Streets Act, forbid grantees and others from transmitting research or statistical information to unauthorized persons and provide for a $10,000 maximum fine (see Section 524).

7. *How has LEAA's civil rights compliance staff been expanded since your last report to me (September 14, 1973)?*

The Office of Civil Rights Compliance has increased its full-time staff from 11 to 14. Our full-time temporary staff is always complemented by students in criminal justice schools, and this figure varies between 4 and 10 at various times during the year. At present we have 3 full-time employees detailed to us who, based on FY 1974 allocation, will become permanent members of our staff.

The employees by title, race, ethnicity, and sex are detailed below:

Full-Time Permanent

Position	*Race*	*Sex*
1. Director	W	M
2. Attorney-Advisor (Civil Rights)	W	F
3. Attorney-Advisor (Civil Rights)	W	M
4. Attorney-Advisor (Civil Rights)	W	M
5. Supervisor, Complaint Resolution	B	M
6. Supervisor, Compliance Reviews	W	M
7. Grants and Contracts Officer	B	M
8. Supervisor, Contract Compliance (Executive Orders)	B	M
9. Secretary (Steno)	W	F

Full-Time Permanent Position	*Race*	*Sex*
10. Clerk (Typing)	B	F
11. Clerk-Typist	B	F
12. Program Assistant	B	F
13. Staff Aid	B	F
14. Civil Rights Compliance Specialist	B	M
Full-Time Temporary		
15. Clerk-Typist	B	F
16. Staff Aid	W	F
17. Clerk Typist	Chicano	F
18. Clerk-Typist	B	F
19. Legal Assistant	B	M
Full-Time Detailed to OCRC		
20. Civil Rights Compliance Specialist (Corrections)	W	F
21. Legal Assistant	Chicano	M

7. (a) *How many persons in LEAA Regional Offices are assigned to monitor grantees civil rights compliance and compliance with the EEO guidelines?*

The Office of Civil Rights Compliance has not, to date, decentralized. Therefore, there are no compliance personnel within our regional office.

However, regional office personnel assist us as needed in our compliant and compliance reviews.

8. *How many outstanding LEAA grants (either through SPA's or "Discretionary Grants") are going to predominately black colleges and universities?*

(a) *What percent of the total grants to universities does this represent?*

Of the approximately $42.9 million available for students in the Law Enforcement Education Program (LEEP) in Fiscal 1974, $1,119,526 has gone to a total of 40 predominantly black colleges and universities

Racial data on LEEP students from the inception of LEAA in June 1969 to November 1973, the most recent information available, is as follows:

Black	16,699
White	151,944
Other	2,051
Unknown	8,603

The reason for the unknown category is because the applicant has failed to answer the question on the application.

LEAA's Grant Management Information System has been able to identify 229 grants of LEAA assistance to colleges and universities for Fiscal 1973 and 1974 to date. Of this number, three grants were made to predominately black colleges and universities. While this includes all categorical grants made by LEAA, it does not include all subgrants made by the states during this period because they have not been reported to LEAA by the state planning agencies. Both the categorical grants and the subgrants are for various purposes and are not limited to providing educational assistance to a particular student.

9. *On or about February 19, 1974 the Civil Rights Division of the Department of Justice filed suit charging the Philadelphia, Pennsylvania Police Department with maintaining policies and practices that discriminate against women in job opportunities. The press release announcing the filing of this suit noted that it was filed at the request of LEAA which investigated the original compliants.*

(a) *Would you please detail the LEAA administrative procedure that proceeded the filing of this suit.*

On August 4, 1973 LEAA received a compliant from a Philadelphia policewoman, Officer Penelope Brace, alleging discrimination based on sex in the employment practices of the Philadelphia Police Department. The Office of Civil Rights Compliance conducted an investigation into the allegations and determined that many of the employment policies and practices of the Philadelphia Police Department were discriminatory based on sex.

In December, 1973, discussions began between the Office of Civil Rights Compliance and representatives of the Police Department for the purpose of determining what remedial action was appropriate and necessary to eliminate those discriminatory policies and practices.

These discussions continued in January 1974, until actions of the Philadelphia Police Department convinced LEAA that the noncompliance which had been determined by our investigation could not be corrected by informal means within the meaning of 28 C.F.R. 42.206 and 28 C.F.R. 42.108. On January 28, 1974, a formal referral of this matter was made to the Civil Rights Division of the U.S. Department of Justice. From the point on, LEAA played no role in the events leading up to the formal filing of a suit on February 19, 1974.

9. (b) *Was there a formal administrative hearing held by LEAA, leading to fund termination proceeding before this suit was brought by the Justice Department?*

A formal administrative hearing was not held. Instead, this case was referred to the Civil Rights Division of the U.S. Department of Justice for litigation to enforce the specific assurances of non-discrimination given by the Philadelphia Police Department to LEAA pursuant to 28 C.F.R. 42.204 (a)(1).

9. (c) *Is the Philadelphia Police Department currently receiving any LEAA funding? What's LEAA policy with respect to any application for funding received from the Philadelphia Police Department during the pendency of the lawsuit?*

As stated in response to question 9(b), no formal administrative hearings have been held, and LEAA has not resorted to the procedures for termination of funding. Thus, block grant funding to the Philadelphia Police Department from the Governor's Justice Commission has not been affected. Currently, however, discretionary grant applications by the Philadelphia Police Department are being considered in the context of a settlement of the issues raised in this case.

9. (d) *Would you please forward me copies of the LEAA investigative report on the sexually discriminatory practices of the Philadelphia Police Department?*

During the investigation of this complaint, a large file was generated. While this file was the basis for the referral to the Civil Rights Division, a formal "report" was never compiled. However, the following is a composite list of the findings of our investigation:

I. *Systematic Discrimination*

We found that the employment policies and practices of the Philadelphia Police Department were discriminatory based on sex in the following areas—

a. *Selection.* There was only a definite and very small number of positions within the Police Department which could be filled by women. At the time of our investigation, there were approximately 68 positions open to women officers on a force of over 7,000 police officers.

b. *Assignment.* All female officers were routinely assigned to the Juvenile Aid Division, the unit within the Police Department which deals primarily with juvenile problems.

c. *Promotion.* There was a very limited number of ranking positions to which a female officer could be promoted. Women could hold a command position only within the Juvenile Aid Division, which, at the time of our investigation, allowed for a total of approximately five female ranking officers.

II. *Retaliation and Harassment*

Our investigation also found cause to believe that Officer Brace was harassed and retaliated against because she had filed a complaint. This finding was based on information indicating that shortly after Officer Brace filed her complaint, she was:

(a) transferred to the District farthest from her home;

(b) ordered to report for a psychiatric re-evaluation;

(c) put under surveillance for approximately 34 days based on an anonymous letter; and

(d) brought before a Police Board of Inquiry on disciplinary charges stemming from the results of the surveillance.

Until the filing of the complaint, Officer Brace had received consistently superior performance ratings.

Your interest in the programs of the Law Enforcement Assistance Administration is appreciated.

Sincerely,

DONALD E. SANTARELLI
Administrator

Enclosures

Attachment #1

RESPONDENTS

1. St. Louis, Missouri, Police Department (race)
2. Lafayette Parish, Louisiana (1) Police Jury and (2) Sheriff's Office (race)
3. Kansas City, Kansas, Police Department (race)
4. Department of Safety, Tennessee—State Police (race)
5. Rochester, New York, Police Department (sex)
6. Birmingham, Alabama, Police Department (race)
7. Jacksonville, Florida, Police Department (race)
8. Austin, Texas, Police Department (national origin)
9. Anniston, Alabama, Police Department (race)
10. Marlboro County, South Carolina, Sheriff's Dept. (referred to Office of Institutions and Facilities, Civil Rights Division, for litigation in April, 1974) (race)
11. Bessemer, Alabama, Police Department (race)
12. Nassau County, New York, Police Department (race)
13. City of Meridian, Mississippi, Police Department (race)
14. Dallas, Texas, Police Department FY 1973 (race)
15. South Carolina Department of Corrections (race)
16. California Department of Corrections (national origin)
17. Madison, Wisconsin, Police Department (race)
18. Tampa, Florida, Police Department (sex)
19. Missouri Highway Patrol (race)
20. Columbia, South Carolina, Police Department (race)
21. Mississippi State Division of Law Enforcement (race)
22. Wheeling, West Virginia, Police Department (race)

23. Seattle, Washington, Police Department (sex)
24. Oakland, California, Police Department (sex)
25. Grenda, Mississippi, Sheriff's Department (race)
26. Grenda, Mississippi, Police Department (race)
27. Hawaii County, Hawaii, Police Department (religion)
28. Honolulu, Hawaii, Police Department (sex)
29. New Orleans, Police Department (sex)
30. New Orleans, Police Department (race)
31. Alexandria, Louisiana Police Department (race)
32. Dallas Co. Sheriff's Department (sex)
33. Indiana State Prison (referred to OCRC Review Division) (race and sex)
34. Illinois State Police (sex)
35. New York State Troopers (sex)
36. Monroe County, New York, Civil Service Commission (sex)
37. Marion, North Carolina Police Department (race)
38. Illinois State Police (race)
39. Nineteen California Cities (referred to OCRC Review Division) (race, national origin and sex)
40. Philadelphia, Police Department (national origin)
41. Louisiana Office of State Examiner of Municipal Fire and Police (race)
42. Brunswick, Georgia, Police Department (sex)
43. Central Missouri State University (referred to HEW, Office for Civil Rights) (sex)
44. Prince Georges County, Maryland Police Department (race)
45. Western Illinois University referred to HEW, Office of Civil Rights (race)
46. Louisville Division of Police (race)
47. Louisville Division of Police (race)

48. Create Two Temporary District Courts for Dallas County (race and sex)
49. San Jose, California, Police Department (national origin)
50. Charles County, Maryland, Sheriff's Department (sex)
51. Union Correctional Institution, Ratford, Florida (race)
52. Denver, Colorado, Police Department (race)
53. Lafayette Parish Sheriff's Department FY 1974 (race)
54. Pennsylvania State Police Academy (sex)
55. Coastal Area Planning and Development Commission, Brunswick, Georgia (race and sex)
56. Metropolitan Police Department, Washington, D.C. (race and sex)
57. Kansas City, Missouri, Police Department (national origin)
58. City of Champaign, Illinois, Board of Fire and Police Commission (race)
59. Philadelphia, Police Department (referred to Civil Rights Division for litigation) (sex)
60. Coastal Area Planning and Developing Commission, Brunswick, Georgia (race and sex)
61. Illinois Department of Corrections (sex)
62. Atlanta, Georgia Police Department (sex)
63. DeKalb County, Georgia, Police Department (sex)
64. Gwinnett County, Georgia, Police Department (sex)
65. Prisoners Rights Project, Boston, Massachusetts (race)
66. Hillsborough County, Florida, Sheriff's Department (sex)

67. Plant City, Florida, Police Department (sex)
68. Temple Terrance, Florida, Police Department (sex)
69. Willingsboro, New Jersey, Police Department (race)
70. Metro. Criminal Justice Center, Drake University—referred to HEW Civil Rights (sex)
71. Orange County California, Criminal Justice Council (race)
72. Charleston, West Virginia, Police Department (race)
73. Dallas-Fort Worth Regional Airport, Department of Public Safety (race)
74. Jacksonville, Florida, Sheriff's Department (race)
75. Lee County, Florida, Sheriff's Department (sex)
76. Detoxification Center, San Diego, Police Department (sex)
77. Metropolitan, Washington, D.C., Police Department (sex)
78. Daugherty County Police Department (race)
79. Spokane, Washington, Police Department (sex)
80. Sarasota County, Florida, Sheriff's Department (sex)
81. Spokane County, Washington (sex)
82. Santa Clara County, California, Sheriff's Department (national origin)
83. City of Berkeley, California, Police Department (sex)
84. City of Rochester, Rochester, New York Police Department (race)
85. Pennsylvania State Police (race)
86. Georgia Department of Offender Rehabilitation (race and sex)
87. Georgia Department of Public Safety (race and sex)

88. Denver, Colorado Police Department (national origin and sex)
89. Maryland State Penitentiary (race)
90. Prince George County, Maryland Sheriff's Department (sex)
91. Chicago, Illinois Police Department (referred to Civil Rights Division in conjunction with litigation pending) (sex)
92. Santa Barbara County, California, Sheriff's Department (race and sex)
93. Beaumont, Texas, Police Department (national origin)
94. Houston, Texas, Police Department (national origin)
95. Fairfax County, Virginia, Police Department (sex)
96. El Paso County, Texas, Jail (national origin)
97. New Jersey State Troopers (sex)
98. Missouri Law Enforcement Assistance Council (race)
99. Northwest Missouri Law Enforcement Assistance Council (race)
100. Berkeley, California Police Department (referred to Review Division of OCRC and litigation by private individuals) (race, sex and national origin)
101. Austin, Texas, Police Department (national origin and sex)
102. Hendersonville, Tennessee, Police Department (sex)
103. New York City, Nw York, Police Department (race)
104. Arizona State Prison (race)
105. University of Illinois at Chicago (referred to HEW, Office for Civil Rights) (race)
106. Florida Highway Patrol (national origin and sex)

107. Texas Department of Public Safety (national origin)
108. Austin, Texas, Police Department (sex)
109. Chicago, Illinois, Police Department (referred to Civil Rights Division in conjunction with litigation (sex)
110. Sheriff's Office of Kay County, Oklahoma (national origin)
111. Los Angeles, California Police Department (national origin)
112. Rolland Park, Kansas Police Department (national origin)
113. Fairway, Kansas Police Department (national origin)
114. State of Wisconsin, Higher Educational Aids Board (referred to HEW Office of Civil Rights) (race)
115. New Orleans, Louisiana Police Department (race and sex)
116. Vineland, New Jersey Police Department (sex)
117. Travis County, Texas Sheriff's Department (race and sex)
118. Georgia Bureau of Investigation (race)
119. Dubuque County, Iowa Board of Supervisors *et. al.* (race)
120. Illinois, Mental Health Police (referred to Office of Civil Rights, HEW) (race)
121. Los Angeles, California Police Department (race and sex)
122. Civil Service Board of Jacksonville *et. al* (national origin and sex)
123. Tuscaloosa, Alabama, Police Department (race)
124. Tuscaloosa, Alabama Juvenile Court (race)
125. Norwich, Connecticut, Police Department (sex)
126. Petersburg, Virginia Bureau of Police (race)

127. Tallahassee, Florida, Police Department (sex)
128. Leon County, Florida, Sheriff's Department (sex)

LARSON AFFIDAVIT
EXHIBIT B

January 10, 1975

The Honorable Charles B. Rangel
House of Representatives
Washington, D.C. 20515

Dear Congressman Rangel:

This is in response to your most recent letter regarding the civil rights compliance activities of the Law Enforcement Assistance Administration. Our answers to your ten questions follow.

1. In response to Question 1, designated Part C, you indicate that LEAA will review a finding of non-compliance by the Court of Appeals regarding an order for the Alabama State Police to achieve a ratio of State Troopers of 25 percent Black and 75 percent White. As I am sure you are aware, on April 19, 1974, the Court of Appeals for the Fifth Circuit Court found non-compliance by the State of Alabama. What action is LEAA taking in response to this finding?

More specifically, will there be an administrative review conducted by LEAA preparatory to the termination of funding to the State of Alabama?

Answer:

The only issue before the Court of Appeals at the time of its April 1974 decision was whether the District Court had abused its discretion in setting a quota hiring requirement upon the Alabama Highway Patrol. They found that, under the facts of the case, the finding was appropriate and necessary. The Court of Appeals did not find that the highway patrol was out of compliance with the lower court order. The case has been remanded to the District Court for a further order.

A hearing was held in the U.S. District Court on September 26. and we expect a further order soon. We are in contact with attorneys from the Employment Section of The Civil Rights Division. Department of Justice, who are actively involved in the prosecution of this case.

2. In response to Question 2 you indicate an "incomplete" response to LEAA's mailing of the EEO–4 forms to state and local police and sheriff's departments. Will you take any action against those funded police agencies who have not responded to your EEO-4 forms?

Answer:

LEAA does not distribute the EEO-4 forms. A similar form was issued by LEAA in 1972 to measure the utilization of minorities and women in state and local police departments. Most of these forms which were not returned would have come from small departments. Virtually, all large departments have responded.

3. In response to Question 3 you provide a list of cases in Attachment 1. Again, without necessarily disclosing the actual parties involved, I would like you to inform me of the resolution of the complaints which LEAA has been investigating. Specifically, I would like to know when the investigation results in a finding for the complainant and the resulting action taken by LEAA.

Answer:

The following is a summary, taken from the list of cases we previously provided to you, of the actions undertaken by OCRC where we concluded that the facts would sustain the complainant, or where we uncovered other problems of non-compliance

1. St. Louis, Missouri, Police Department—race

We found that the background factors utilized in rejecting the complainant were discriminatorily applied. The respondent, upon our request, agreed to reconsider the complainant, not utilizing those factors. After a significant number of months, the complainant failed to reduce his weight to an acceptable level, and his blood pressure was not within acceptable measures. We, therefore, removed the case from our active files. Systemic problems are being addressed by the Review Division of OCRC.

8. Austin, Texas, Police Department—National Origin

We disagreed with the complainant's rejection by the oral examination board. We have requested that he be hired, with back pay, and that systemic reforms be made of the police department's hiring practices to insure equal employment opportunities for minorities and females. At this date, the department has not been responsive. We have now referred the matter to the Civil Rights Division of the Department of Justice for consideration of appropriate legal proceedings to secure compliance.

10. Marboro County, S.C., Sheriff's Department—race.

After referral to the Civil Rights Division for litigation, respondent immediately integrated its jail facilities. The Civil Rights Division of the Department of Justice is monitoring for continued compliance.

27. Hawaii County, Hawaii, Police Department—Religion.

We found that complainant, a Seventh-Day Adventist, was terminated because of his religious beliefs and practices. We unsuccessfully sought his reinstatement. Religion is not covered by Section 515(c)(1) of the Omnibus Crime Control and Safe Streets Act and we have now referred the matter to the Civil Rights Division of the Department of Justice for consideration of appropriate legal proceedings to secure compliance.

48. Create two temporary District Courts for Dallas County, Texas—race.

We did not find that the individual complainant was not hired because of race or sex. However, we determined that the respondent failed to affirmatively recruit and inform the minority community of job vacancies and, therefore, we required specific modifications in its employment practices to rectify these problems. We are also monitoring the results of those changes. The first monitoring report was received recently and will be evaluated.

55. Georgia, Coastal Area Planning and Development Commission—race and sex.

In coordination with several other Federal agencies which provide funds to the respondent, we are seeking back pay for the complainant, who does not wish reemployment. We also are seeking to obtain affirmative recruitment of minorities.

59. Philadelphia, Police Department—sex.

As reported in earlier correspondence, the matter was referred to the Civil Rights Division of the Department of Justice, which instituted legal proceedings. The matter is presently before the court.

60. Georgia Coastal Area Planning and Development Commission—race and sex.

Results are the same as in case number 55, except that we are seeking reinstatement for the complainant.

68. Temple Terrace, Florida, Police Department—sex.

The complaint was filed by the National Organization of Women and did not involve any specific complainant. We found that the respondent needed to make some of the questions neuter on its application form. This has been done by the respondent.

75. Lee County, Florida Sheriff's Department—sex (employment), race (facilities).

Subsequent to our initial investigation of sex discrimination in the respondent's employment practices, we discovered that the jail facilities are partially segregated by race. We are currently attempting to secure voluntary compliance in both these areas.

4. In response to my Fourth Question, you list police agencies in which compliance reviews have been conducted by the Office of Civil Rights Compliance and indicate that recommendations have been made regarding the allocation of services by police departments, while stating that you feel you are not free to provide information in the nature of recommendations made. I would like to receive the survey forms that are used by LEAA in its compliance reviews of

police agencies so that I might know what questions are asked and what areas are being investigated. Further, it appears to me that your policy of not making service discrepancies public is counter-productive in your current negotiations. It seems to me that the threat of publicized communities would be a tremendous bargaining asset as I am sure no police agency wants to be publicized as discriminating in regard to its allocation of manpower and services to particular communities within a city.

I would hope that you would reconsider this policy and provide me with information on the recommendations that have been made to specific police departments. Further, I believe non-disclosure of this information is inconsistent with the Freedom of Information Act and could be obtained through administrative action. In your list of sample recommendations made in compliance reviews to police forces, specifically in Subsections 5 and 6, it is stated that the lack of police department records makes it impossible for LEAA to make a determination and therefore no recommendation can be set forth. Why is there a dependence on police department records? LEAA has a well funded research capacity and the ability to investigate the situation itself. Is not an investigation conducted by LEAA to determine the facts where adequate police department records do not exist?

Answer:

I have enclosed a copy of the LEAA "Civil Rights Compliance Review Manual for Police Agencies," which contains the survey forms you requested.

LEAA does not have the internal capacity to collect the civil rights compliance data for every department in which it does a compliance review where the department itself may not collect data. OCRC has, in the process of compliance reviews, conducted community interviews and taken statistical samples where data is lacking and cannot be generated by the police department.

5. Your response to my question denoted 5A indicates that LEAA has initiated no action itself regarding providing technical assistance to state planning agencies to assist them in preparation of appropriate EEO programs. Is

LEAA contemplating its own compliance program to determine whether height guidelines are being complied with by recipient agencies?

Answer:

As indicated in our response to your previous letter, LEAA has provided a mechanism to furnish expert technical assistance in equal opportunity matters to criminal justice agencies through a contract with the International Association of Official Human Rights Agencies (IAOHRA) and a grant to the Marquette University Center for Criminal Justice Agency Organization and Minority Employment Opportunities. Enclosed for your information is a copy of LEAA's recently published Equal Employment Opportunity Program Development Manual.

LEAA makes recommendations concerning minimum height requirements, when appropriate, as part of the complaint investigation or compliance review procedure.

6. I am amazed by your response to Question 5C in which you indicate that the only law enforcement agency scheduled for a compliance review in FY 1974 is the Norfolk Police Department. I understand that only two compliance reviews have been made in the last three years by the Law Enforcement Assistance Administration. This record does not appear to be one of vigorous civil rights compliance and I would like an explanation as to why only one compliance review of a police department has been scheduled for 1974 and why there has been such a limited number of compliance reviews by the Office of Civil Rights Compliance. I would also like to receive a copy of the compliance reviews which have been completed.

Answer:

LEAA recently has focused its efforts on pre-award compliance reviews in order to prevent funding of agencies which practice discrimination. As a result, staff time to conduct systemic compliance reviews of recipient agencies has been limited.

However, LEAA does have a record of vigorous civil rights compliance activity, exemplified by systemic compli-

ance reviews in 18 major criminal justice agencies. Other systemic reviews will be conducted during fiscal year 1975.

Negotiations for voluntary compliance are continuing in some of the agencies where we have conducted systemic reviews. We have not made copies of documents relating to these reviews available to the public because we believe that to do so might prejudice our negotiations.

A copy of the LEAA-funded study of minority employment practices of the Chicago Police Department is enclosed.

With the exception of Chicago, the copies of compliance reviews which you requested cannot be supplied because they do not exist. The typical systemic compliance review involves the collection of a great deal of raw data, from which are drawn specific recommendations for corrective actions to the department in question. No report analyzing the information gathered on a particular department ordinarily is produced.

However, when voluntary compliance is achieved or legal proceedings to enforce compliance initiated, data relating to the departments involved is released to the public.

7. In response to Question 7 regarding the expansion of the Civil Rights Compliance staff you provided me with a list of employees by title, race, ethnicity, and sex. Although I did not request this information, I welcome it for it provides the basis for another question. It appears to me that the Office of Civil Rights Compliance needs a compliance investigation of its own. It appears from your list that the top four positions in the office are held by whites, that there are no Black attorneys working in the Office of Civil Rights Compliance Review and that out of the positions which I can identify as professional, only three are held by Blacks. Out of the twelve non-professional positions, however, eight are held by Blacks. Have efforts been made to hire Black attorneys in the Office of Civil Rights Compliance? If there is an affirmative action plan for equal employment opportunity for the LEAA I would like to receive a copy.

Answer:

I have enclosed a copy of the LEAA affirmative action plan. Two of the Blacks of OCRC's professional staff are law graduates, and one of these is awaiting the results of the District of Columbia bar examination. The OCRC staff has been integrated thoroughly on the basis of race, sex, and ethnicity since it was formally organized as an office in May 1971. Blacks are well represented in the various levels of supervision and responsibility within OCRC.

8. Your response to Question 7A indicates that there is no ongoing civil rights compliance activity in the LEAA regional offices. Even if the Office of Civil Rights Compliance is not physically located in these offices is there not an LEAA official with responsibility for civil rights compliance on a day-to-day basis?

Answer:

Centralization of coordination efforts in civil rights matters at the regional level through a single individual has not always worked well. Some offices designate individuals to coordinate compliance activities, but most coordination of this character is carried on by the LEAA state program representative for the state in question.

9. Your response to Question 8 indicates that grants provided by LEAA directly to colleges and universities are not being given to predominantly Black colleges and universities. Out of 229 grants provided in FY 1973 and 1974 to date only three grants have been received by Black universities. Such a record is bitter irony given the fact that many of these grants have been given to study conditions in the Black community. Once again we see the phenomenon of white scholars being given federal money to study Black folks. This situation is intolerable and must be investigated so that Black colleges and universities who have the greatest expertise can get a fair share of research money which would, of course, be of tremendous assistance to them in providing their educational function for the Black community and would at the same time provide better quality of study and recommendation for the federal government for our policy determinations. I would like to receive

a description of the purpose of each of the 229 grants that have been awarded and the name of the universities to which they have been awarded.

Answer:

Enclosed is the most recent computer printout from LEAA's Grant Management Information System disclosing 594 Grants to educational institutions. The reason for the large increase in the number of grants is the result of continuous updating of the data base. A large part of this increase is because grantor agencies participating in the LEAA programs often wait to the conclusion of a fiscal year before reporting certain types of grants.

The only program available to retrieve the information you requested is to ask for all grants going to educational institutions. In addition to grants to colleges and universities, grants to 23 other types of educational institutions are included. They are noted with a red asterisk. The 571 grants to colleges and universities fund a variety of projects such as campus security, evaluation of criminal justice programs, graduate research fellowships, and student internship programs. Twenty of these grants went to 12 predominantly Black schools. They are noted with a green asterisk. The lack of participation of these schools can be explained in part by the fact that many of them do not offer graduate programs.

The printout lists only a small percentage of the student internship grants. A request for an intership grant is normally initiated by the student. The increase in the percentage of Black college students going to predominantly white institutions may partially account for the low number of internship grants to predominantly Black institutions.

10. In regard to your response to my Question 9 concerning the investigation of the Philadelphia Police Department, it is my understanding that the LEAA statute, as amended by the Congress in 1973, requires a termination of funding to agencies for which has been found a noncompliance which cannot be corrected by informal means within the meaning of 28 C.F.R. 42.206 and 28 C.F.R. 41.108. Yet in your response to number 9C, you indicate

that no formal administrative hearings have been held and LEAA has not resorted to the procedures for termination of funding. In failing to terminate funding to the police department are you not presently in violation of the law?

Answer:

No formal administrative hearing was held by LEAA leading to fund cutoff before the Philadelphia suit was brought by the Justice Department. A court action was brought for three reasons:

(i) In January 1974, LEAA was informed by the City of Philadelphia Solicitor's Office that Officer Penelope Brace, the individual who had filed a complaint with LEAA and the Equal Employment Opportunity Commission, would be removed from the Philadelphia Police Force in a matter of days. LEAA had reason to believe that Officer Brace's removal was ordered in retaliation for her filing complaints with LEAA and the Equal Employment Opportunity Commission. Only a court ordered injunction, which the Department of Justice ultimately obtained, could have prevented this firing and kept Officer Brace on the police force.

(ii) The novelty of the question of utilization of women in police service was and still is in need of resolution in a court of law. *Reed* v. *Reed*, 401 U.S. 71 (1971) extended coverage of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution to women. This coverage was broadened to include discrimination in employment in *Frontiero* v. *Laird*, 411 U.S. 677 (1973), but not Federal Court above the District Court level has yet considered comprehensively the critical issue as to whether sex is a valid criterion for selecting persons for police work from a Fourteenth Amendment—equal protection—point of view, or from the point of view of statutory provisions such as Section 518(c)(1), which are derived from the Fourteenth Amendment. LEAA thought it desirable to obtain a more authoritative ruling of the Federal courts on this issue before attempting to enforce compliance and causing disruption in funding the Philadelphia Police Department which could result from an erroneous application of the law.

(iii) The extent to which employment discrimination is covered by Section 518(c) of the Omnibus Crime Control and Safe Streets Act is open to varying interpretations. LEAA did not rely on Section 518(c) in referring the case to the Civil Rights Division. LEAA relied on its equal employment opportunity regulations, 28 C.F.R. 42.301 *et seq.*, which require LEAA to pursue court action and not administrative action to resolve matters of employment discrimination.

LEAA funds are still going to the Philadelphia Police Department. Two $1 million discretionary awards were recently made to continue the funding of two task force patrols in the city's high-crime areas. LEAA originally deferred funding of these proposals to assure appropriate progress in the satisfactory resolution of the litigation.

With the complainant, Penelope Brace, reinstated to her position with the Philadelphia Police Department, and the difficult issues of discrimination because of sex being considered in an orderly manner by the court, institution of proceedings to defer, suspend, or terminate funding seems inappropriate in this case.

The impact upon all citizens of Philadelphia of withdrawing the additional police protection being provided was deemed to be on balance of more immediate consequence. These grants were specifically oriented to provision of better police protection in the high crime areas of the city and the effect of withdrawal of this protection would impact harshly on the citizens least able to protect themselves.

The funds in question were applied for in October 1973. The Philadelphia Regional Office of LEAA agreed at that time to pay the police department's pre-agreement expenses if the awards were eventually granted. The City has expended virtually all of the $2 million. Our decision to fund is not an endorsement of the Police Department's present employment practices. If the court determines that the Philadelphia Police Department is engaging in discrimination because of sex in its employment practices, LEAA will review its grants to Philadelphia in order to determine if further proceedings to defer, suspend, or terminate LEAA

funding to the City of Philadelphia would assist in achieving full compliance with the court order.

LEAA's view of Section 518(c)(1) of the Act is that it applies to employment matters where the primary purpose of a program or activity, funded under the Omnibus Crime Control and Safe Streets Act, is employment related or where discrimination in the employment practices of a recipient of LEAA funds could cause a beneficiary to be excluded from an LEAA-funded activity on the ground of race, color, national origin, or sex. Whenever the Administrator determines that a State government or unit of local government has failed to comply with Section 518(c)(1) of the Act and the Governor of a State fails to secure compliance, initiation of an administrative hearing under Section 509 of the Act is required. However, where the Administration is of the view that it does not have sufficient evidence or legal guidance before it to determine that there is failure to comply with Section 513(c)(1) but only has reason to believe that a violation of Section 518(c)(1) but only has reason to believe that a violation of Section 513(c)(1) has occurred, it is proper under Section 513(c)(3) to ask the Attorney General to bring a civil action in the appropriate United States District Court.

You will also be interested to know that early in calendar year 1975 we plan to submit for internal review by LEAA managers and Department of Justice officials regulations which would implement Section 518(a) of the Act. External review by the civil rights community and criminal justice planning and operational groups will also be sought.

Your continued interest in these matters and in the programs of the Law Enforcement Assistance is appreciated.

Sincerely,

Richard W. Velde
Administrator

Enclosure:

LARSON AFFIDAVIT
EXHIBIT C

AMERICAN CIVIL LIBERTIES UNION

22 East 40th Street
New York, N.Y. 10016 (212) 725-1222

August 11, 1975

Mr. Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Re: FOIA Request

Dear Herb:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, I hereby request copies of the following documents:

1. All documents, memoranda and letters to the City of Philadelphia, to the Philadelphia Police Department, to their representatives, and to the chief executive of the State of Pennsylvania or his/her designee, indicating OCRC's belief that the Philadelphia Police Department is not or was not in civil rights compliance with the Safe Streets Act, Title VI, and/or LEAA regulations and guidelines.

2. All documents, memoranda, and letters to the City of Portland [Oregon], to the Portland Police Department, to their representatives, and to the chief executive of the State of Oregon or his/her designee, indicating OCRC's belief that the Portland Police Department is not or was not in civil rights compliance with the Safe Streets Act, Title VI, and/or LEAA regulations and guidelines.

3. All post-investigation documents, memoranda, and letters to an LEAA recipient or subgrantee, to its representatives and to the chief executive of a State or his/her designee, indicating OCRC's belief that the recipient or subgrantee is not or was not in civil rights compliance with the Safe Streets Act, Title VI, and/or LEAA regulations and guidelines.

Mr. Herbert C. Rice
Washington, D.C.

You may bill me at this office for the cost of reproducing materials containing the above information.

Sincerely yours,

E. Richard Larson
National Staff Counsel

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
WASHINGTON, D.C. 20531

August 21, 1975

Mr. E. Richard Larson
National Staff Counsel
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

Re: *FOIA Requests*

Dear Mr. Dick:

Pursuant to your FOIA request, dated August 11, 1975, and received in our offices on August 14, 1975, enclosed with this letter are copies of pertinent correspondence concerning Philadelphia and Portland, Oregon. I believe this covers the first two items in your request.

Concerning the third item in your request of that date, it is my understanding that you temporarily withdrew that request in a telephone conversation with Mr. William K. Triplett of our office on August 18, 1975. We will attempt to clarify that request at our meeting on August 21, 1975.

As Mr. Triplett further advised, the requested information regarding the results of the 2000/1 survey is available for your inspection in our offices at your convenience.

Sincerely,

/s/_____

HERBERT C. RICE, *Director*
Office of Civil Rights Compliance

Enclosure:

January 29, 1974

Mr. Sheldon Albert
Chief Deputy City Solicitor
HEW Department, City of Philadelphia
15th Floor, Municipal Services Building
Philadelphia, Pennsylvania

Dear Mr. Albert:

This is to confirm the understandings you and I have reached in our two telephone conversations of this date. As I informed you this morning, the Attorney General has authorized the filing of a civil action against the Philadelphia Police Department to enforce the prohibitions of Title VII of the Civil Rights Act of 1964, as amended, and the Regulations of the Law Enforcement Assistance Administration and the Department of Justice, against discrimination in employment on account of sex. I further advised you that we would be willing to delay the filing of the complaint the Attorney General has signed while the parties attempt to achieve a voluntary resolution of the matters raised in the complaint by negotiating a satisfactory consent decree, but that such willingness was contingent on our receipt of reliable assurance that, during the pendency of our negotiations, no adverse personnel action of any sort would be taken by the Philadelphia Police Department against Policewoman Penelope Brace.

You have now informed me that you are authorized to and do make such assurance. In reliance on that assurance I have agreed to delay filing the complaint in this action, and to meet with them, February 4, 1974 in Philadelphia to begin settlement discussions.

I believe this letter fully and accurately reflects the substance of the understandings we have searched today. I would appreciate it if you would confirm that understanding, either by return letter to me, or by signing and returning to me one copy of this letter.

I look forward to meeting you on Monday and believing what I hope will be fruitful negotiations.

/s/_____
J. STANLEY POTTISGER
Assistant Attorney General
Civil Rights Division

By:

/s/_____
DENIS T. GORDON
Deputy Chief, Employment Section

cc: Donald Santarelli, Administrator
Law Enforcement Assistance Administration

WESTERN UNION MAILGRAM

LEAA United States Department of Justice care Herbert C. Rice

Washington DC 20530

This mailgram is a confirmation copy of the following message:

2023863241 TDMT Washington DC 176 01-28 0526P EDT
PMS Commissioner Joseph O'NEill
8th and Race St
Philadelphia PA

This is to advise you that discussions with Sheldon Albert, Chief Deputy City Solicitor relating to the complaint of Police Officer Penelope Brace filed with LEAA on August 4, 1973, have failed to result in a commitment by the City of Philadelphia to take significant steps to achieve voluntary compliance with the Civil Rights Regulations Affecting recipients of funds from LEAA

This will also formerly advise you that LEAA has determined that the Philadelphia Police Department has faild to comply with the LEAA Equal Employment Opportunity Regulations, 28 C.F.R. 42.201 et seq., Sub Part D The LEAA has further determined that compliance with these regulations cannot be achieved by voluntary means.

Accordingly this matter has been referred to The Civil Rights Division of the Department of Justice for consideration of the institution of appropriate legal proceedings in accordance with the Law and Regulations of the Department of Justice and the Law Enforcement Assistance Administration

Herbert C. Rice Director Office of Civil Rights Compliance Law Enforcement Assistants Administration United States Department of Justice Washington DC

This is a confirmation copy by mailgram.

September 20, 1974

Mr. Hillel S. Levinson
Managing Director
City of Philadelphia

Dear Mr. Levinson:

In acknowledging receipt of your letter of September 19, 1974, in reference to the development of EEO programs for the City's Police and Prisons systems, I thought it appropriate to again identify the relevant sections of the LEAA guidelines that must be adhered to within the 60 day time limit agreed upon.

You should be aware however, that the stated deficiencies are related only to the draft EEO program developed by the Philadelphia Police Department reviewed by LEAA and SPA staff. Since no representatives were available from the City's Prison system, this team was not able to review any of their related materials and their program must be in accordance with the guideline in its entirety.

A copy of the Guideline 28 C.F.R. 42.301 et. seq. subpart E, that these deficiencies will be itemized from was given to your Deputy, Mr. Campbell, Mr. Jones of Personnel Department and Chief Inspector Craig of the Police Department.

The identified deficiencies include the following sections of the guideline.

> 42.303.(b); 42.303(c)(2); 42.303(c)(3); 42.304(c); 42.304(d) 42.304(g); 42.304(g)(2); 42.304(h); 42.304(i); 42.305; and 42.305

Notwithstanding the fact that the Police Department and the Prison system promulgate and maintain programs as required by the guideline, the City must be aware that any additonal units of government which seeks Federal funding must prepare similar programs as a pre-requisite for funding.

On or about November 18, 1974, we will again visit your office for a review of the EEO programs from the Police Department and Prison systems consistent with our agree-

ment. Please advise if these programs will be at a location other than your office for review.

Again, please call upon the Regional LEAA Office within the time limit, if assistance is needed.

Sincerely,

CORNELIUS M. COOPER
Regional Administrator

Mr. Hillel S. Levinson
Managing Director
City of Philadelphia
Room 1620, Municipal
Services Building
Philadelphia, Pennsylvania 19107

Re: 72-DF-0029
72-DF-0038

Dear Mr. Levinson:

The application for continuation funding for the two successful projects referenced above have been processed by the Philadelphia Region. Both have undergone preliminary review and have been found to be programmatically acceptable.

At this time, final approval of these grants is being considered in the context of satisfactory progress in the suit filed by the United States Department of Justice alleging systemic discrimination because of sex in the employment and personnel practices of the Philadelphia Police Department, and also alleging harassment and retaliation in the termination of Officer Penelope Brace. As you may be aware, that litigation developed out of an investigation conducted by LEAA's Office of Civil Rights Compliance. That investigation surfaced problems of non-compliance with the civil rights laws and regulations affecting LEAA recipients, and subsequent negotiations were unsuccessful in securing a satisfactory resolution of these issues.

It is my understanding that the part of the lawsuit concerning Officer Penelope Brace has been substantially settled by virtue of a decision by the Philadelphia Civil Service

Commission, but that a date has not been set for a trial on the merits regarding the general issue of discrimination because of sex in the Police Department. I have been assured that the Civil Rights Division of the Department of Justice will proceed expeditiously in this matter, and I hope that you can impress upon the City Solicitor's office the importance of moving quickly toward a resolution of this case.

I hope that this letter has clarified the present status of the above-referenced grants. If you desire any further assistance, Mr. Cornelius K. Cooper, Administrator of the Philadelphia Regional Office will be glad to assist you.

Sincerely,

Charles R. Work
Deputy Administrator
for Administration

August 7, 1975

Mr. Richard Velde, Administrator
Law Enforcement Assistance Admin.
United States Department of Justice
Washington, D.C. 20530

Re: *FOIA Request*

Dear Mr. Velde:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, as amended, I hereby request an enumeration of all (A) LEAA discretionary funding, and (B) LEAA block funding for fiscal years (1) 1972, (2) 1973, (3) 1974, (4) 1975, and (5) 1976, which has been made to the following law enforcement agencies as LEAA recipients or subgrantees:

(a) All state police departments.
(b) Atlanta [Georgia] Police Department.
(c) Ames [Iowa] Police Department.
(d) Bridgeport [Connecticut] Police Department.
(e) Cleveland [Ohio] Police Department.
(f) Des Moines [Iowa] Police Department.
(g) Detroit [Michigan] Police Department.
(h) Honolulu [Hawaii] Police Department.
(i) Las Vegas [Nevada] Police Department.
(j) New Orleans [Louisiana] Police Department.
(k) New York [New York] Police Department.
(l) Newton [Iowa] Police Department.
(m) Oakland [California] Police Department.
(n) Philadelphia [Pennsylvania] Police Department.
(o) Portland [Oregon] Police Department.
(p) Richmond [California] Police Department.
(q) St. Louis [Missouri] Police Department.
(r) Wayne County [Michigan] Police Department.

Your may bill me at this office for the cost of reproducing materials containing the above information.

Thank you for your assistance.

Sincerely,

E. RICHARD LARSON
National Staff Counsel

August 21, 1975
E. Richard Larson
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

Dear Mr. Larson:

Enclosed you will find the information you requested from the LEAA Grants Management Information System (GMIS). I hope you will find this information both useful and informative.

The information you are receiving is the most current information from the GMIS data base. However, the data is in a constant process of update, and as of the present time all awards of FY 74 funds have not been entered into the data base. Since some states have been updated and others have not, it is impossible to say that the information is accurate as of a certain date. If you have any questions, please contact Suzanne Grundstrom, of the Information Retrieval Staff, at 202/376-3886.

Sincerely,

DELPHINE F. DAY
Systems Analyst
Information Retrieval Staff

Enclosure

P.S. The cost of this information is $137.72; you will be sent a bill at a later date.

LARSON AFFIDAVIT
EXHIBIT D

SUMMARY OF AWARDS BY FUND TYPE AND CRIMINAL JUSTICE COMPONENTS
(In thousands of dollars as of 7/31/75)

	Police		Courts		Corrections		Total Police Courts, Corrections	Obligation Authority	% Obligation Authority Represented
1969									
Block	18,285	79%	1,891	8%	2,932	13%	23,098		
Non Block	4,490	66%	496	7%	1,844	27%	6,830		
Total	22,775	76%	2,377	8%	4,776	16%	29,928	60,000	50%
1970									
Block	110,972	63%	14,473	8%	50,039	29%	175,484		
Non Block	24,599	62%	4,505	11%	10,718	27%	39,822		
Total	135,571	63%	18,978	9%	60,757	28%	215,306	267,937	80%
1971									
Block	177,203	50%	40,248	11%	135,851	39%	353,302		
Non Block	35,618	34%	10,148	10%	59,193	56%	104,959		
Total	212,821	46%	50,396	11%	195,044	43%	458,261	528,954	87%
1972									
Block	201,851	46%	72,528	17%	159,488	37%	433,867		
Non Block	64,282	42%	22,901	15%	64,601	43%	151,784		
Total	266,133	46%	95,429	16%	224,089	38%	585,651	698,723	84%
1973									
Block	216,455	47%	72,731	16%	170,708	37%	459,894		
Non Block	69,943	38%	33,186	18%	80,740	44%	183,869		
Total	286,398	44%	105,917	17%	251,448	39%	643,763	841,166	77%
1974									
Block	163,319	44%	76,151	20%	134,617	36%	374,087		
Non Block	54,592	32%	21,796	13%	94,086	55%	170,474		
Total	217,911	40%	97,947	18%	228,703	42%	544,561	870,526	62%
1975									
Block	33,330	40%	15,615	19%	36,611	33%	81,556		
Non Block	59,174	34%	36,139	21%	77,758	45%	173,071		
Total	93,504	39%	51,754	20%	104,369	41%	254,627	862,171	30%
Total									
Block	927,415	49%	293,627	15%	688,246	36%	1,901,288		
Non Block	312,698	38%	129,171	15%	388,940	47%	830,809		
Total	1,240,113	45%	422,793	16%	1,069,186	39%	2,732,097	4,129,477	66%

STATE: PENN

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CITY: PHILADELPHIA

TITLE:
CLOSED CIRCUIT TELEVISION COMMUNICATIONS SYSTEM STUDY

AWARD AMOUNT:
$19,733

FUNDING HISTORY:
0 69 DF $19,733

GRANTEE NAME AND ADDRESS:
CITY OF PHILADELPHIA
POLICE DEPARTMENT
FRANKLIN SQUARE
PHILADELPHIA PA 19106

GRANT NO.:
69DF030015

PROJECT DIRECTOR:
CAPTAIN JOHN CRAIG

PROJECT SUMMARY:
THIS IS AN AWARD IN THE AMOUNT OF $19,733 TO THE PHILADELPHIA POLICE DEPARTMENT TO COVER, IN PART, THE FIRST PHASE OF A FOUR-PHASE PROGRAM THAT WILL PROVIDE THE DEPARTMENT WITH A CLOSED CIRCUIT TELEVISION SYSTEM (CCTV). THE TOTAL COST TO COMPLETE THIS PHASE IS $93,311 ($56,000 LEAA AND $37,311 LOCAL). THE BALANCE OF THE REQUIRED SUPPORT WILL BE CONSIDERED BY LEAA AFTER CONGRESSIONAL ACTION ON FY 1970 APPROPRIATION HAS BEEN CONCLUDED. THE FIRST PHASE CONSISTS OF: 1. TECHNICAL EVALUATION OF THE MOBILE SUB-SYSTEM REQUIREMENTS (VAN & HELICOPTER); 2. DETERMINATION OF TRAINING SUBSYSTEM REQUIREMENTS AS THEY MAY RELATE TO CCTV; 3. STUDY AND EVALUATION OF SURVEILLANCE CCTV TECHNIQUES; 4. DETERMINATION OF COSTS FOR THE ENTIRE SYSTEM TO INCLUDE EQUIPMENT, INSTALLATION, FACILITY CONSTRUCTION AND SYSTEM DESIGN. THIS AWARD IS ONE OF A SERIES OF GRANTS MADE PURSUANT TO THE PROGRAM ENTITLED "SPECIAL GRANTS FOR CRIME CONTROL PROJECTS IN LARGEST CITIES" ANNOUNCED AND INCLUDED IN THE LAW ENFORCEMENT ADMINISTRATION'S SPA MEMO NO. 14 (MAY 10,1969).

TITLE:
PHILA. POLICE DEPT., CHEMICAL LABORATORY SECTION

AWARD AMOUNT:
$112,881

FUNDING HISTORY:
0 72 DF $112,881

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPARTMENT
HEADQUARTERS, FRANKLIN SQ.
PHILADELPHIA PA 19106

GRANT NO.:
72DF030444

PROJECT DIRECTOR:
VINCENT CORDOVA

PROJECT SUMMARY:
THE PHILADELPHIA POLICE DEPARTMENT PROPOSES TO ACQUIRE THE MODERN EQUIPMENT AND ADDITIONAL PERSONNEL WHICH WILL ENABLE THE CHEMICAL LABORATORY SECTION TO OPERATE AT THAT PEAK OF EFFICIENCY NECESSARY FOR IMPROVED LAW ENFORCEMENT. UNDER THIS PROGRAM, ALL UNITS WITHIN THE CHEMICAL LAB SECTION WOULD BE EXPANDED, EITHER WITH EQUIPMENT/PERSONNEL OR BOTH. FOR INSTANCE, THE MOBILE CRIME DETECTION UNIT WOULD BE EXPANDED BY 10 MEN AND TWO MOBILE CRIME LABS ENABLING THAT UNIT TO DECENTRALIZE ITS OPERATION. THIS INCREASE IN CAPABILITY WOULD NECESSARILY RESULT IN AN INCREASE IN EVIDENTIARY MATTER TO BE ANALYZED NECESSITATING AN INCREASE IN

THE CAPABILITY OF THE ANALYSIS SECTION. PAST EXPERIENCE HAS SHOWN THAT, OF THE CRIME SCENES SERVICED BY THE MOBILE UNIT, APPROXIMATELY 90% WERE CLEARED BY ARREST OR INVESTIGATION. ADDITIONALLY, NEIGHBORING JURISDICTIONS WHICH NOW REQUEST SERVICE, FREE OF CHARGE, COULD BE ACCOMMODATED MORE QUICKLY AND THE SERVICE REQUESTS OF THE PHILADELPHIA POLICE DEPARTMENT WOULD NOT BE APPRECIABLY CURTAILED DUE TO LACK OF MANPOWER OR EQUIPMENT. THE EVALUATION OF THIS PROJECT WILL BE ACCOMPLISHED THROUGH COMPARISON OF THOSE SERVICE STATISTICS DEVELOPED DURING THIS GRANT PERIOD WITH STATISTIC AVAILABLE FROM PRIOR YEARS.

TITLE:
NORTH CENTRAL/ NORTHWEST PHILADELPHIA STRIKE FORCE

AWARD AMOUNT:
$217,795

FUNDING HISTORY:
0 71 DF $217,795

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT
8TH & RACE STS
PHILADELPHIA, PA 19106

GRANT NO.:
71DF031127

PROJECT DIRECTOR:

PROJECT SUMMARY:
THIS DEMONSTRATION PROJECT PROVIDES FOR A STRIKE FORCE OF 64 PLAINCLOTHES POLICEMEN TO OPERATE IN NORTH CENTRAL AND NORTHWEST PHILADELPHIA (22ND, 23RD AND 39TH POLICE DISTRICTS). THE GOAL OF THE STRIKE FORCE TEAM IS TO STOP THE INCREASE IN BURGLARY AND ROBBERY IN THE PROJECT AREA DURING THE PROJECT YEAR. PHILADELPHIA PLANS TO CREATE A MOBILE POLICE DISTRICT TO BETTER UTILIZE ONE 64 MEMBER STRIKE FORCE TEAM. THE PLAINCLOTHSMEN WILL BE RESPONSIBLE ONLY FOR PREVENTIVE PATROL IN UNMARKED VEHICLES. INVESTIGATION OF KNOWN OFFENDERS OR SUSPECT INDIVIDUALS, AND SURVEILLANCE OF BUSINESS AND RESIDENTIAL PROPERTIES TO REDUCE BURGLARY AND ROBBERY. THE STRIKE FORCE MEMBERS WILL NOT BE USED FOR PURPOSES OTHER THAN THE REDUCTION OF IMPACT CRIME. THE WORK SCHEDULE OF THE TEAM WILL BE HIGHLY FLEXIBLE SO THAT THE TEAM CAN BETTER RESPOND TO CHANGING PATTERNS OF CRIME AND SPECIFIC PROBLEM AREAS AS THEY ARE IDENTIFIED. LEAA PROJECT FUNDS WILL BE UTILIZED FOR THE SALARIES AND SUPPORT EQUIPMENT OF THE 64 POLICE OFFICERS.

TITLE:
CRIME REDUCTION PROGRAM FOR WEST PHILADELPHIA

AWARD AMOUNT:
$1,000,000

FUNDING HISTORY:
0 72 DF $1,000,000

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT
8TH & RACE STREETS
PHILADELPHIA PA 19106

GRANT NO.:
72DF030029

PROJECT DIRECTOR:
JOHN CRAIG

PROJECT SUMMARY:
THE GOAL OF THIS DEMONSTRATION PROJECT IS THE REDUCTION OF STRANGER -TO-STRANGER CRIME, ESPECIALLY BURGLARY AND ROBBERY, IN WEST PHILADELPHIA. DURING THE 12 MONTH LIFE OF THE PROJECT, THE BURGLARY AND ROBBERY INCREASE IN WEST PHILADELPHIA IS EXPECTED TO BE HALTED. THE 63 VETERAN POLICE OFFICERS FUNDED BY THIS PROJECT WILL BE DIVIDED INTO A GANG CONTROL TEAM (16 MEN), A NARCOTICS TEAM (10 MEN), A TRU ANCY TEAM (12 MEN), AND A TACTICAL UNIT TEAM (25 MEN). THESE FOUR TEAMS ARE EXPECTED TO REDUCE BURGLARIES, ROBBERIES AND OTHER STRANG ER-TO-STRANGER CRIMES BY CONCENTRATION OF PATROL AND UTILIZATION OF RESOURCES AND SPECIAL TECHNIQUES. POLICE RECRUITS WILL BE HIRED T O REPLACE THE VETERAN OFFICERS ASSIGNED TO THIS PROJECT. LEAA PROJ ECT FUNDS ARE FOR THE SALARIES AND SUPPORT EQUIPMENT FOR THE 63 POL

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LEAA NON-BLOCK GRANTS
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

TITLE:
CRIME ANALYSIS TEAM

AWARD AMOUNT:
$200,000

FUNDING HISTORY:
0 72 DF $200,000

GRANTEE NAME AND ADDRESS:
CITY OF PHILADELPHIA
15 TH & JFK BLVD
PHILADELPHIA PENNA 19107
MU 6414C

GRANT NO.:
72DF030030

PROJECT DIRECTOR:
HILLEL S LEVINSON

PROJECT SUMMARY:
THE PRIMARY OBJECTIVE OF THE CRIME ANALYSIS TEAM IS AN OVERALL REDUCTION IN CRIME, ESPECIALLY STREET CRIME AND BURGLARY. THIS PLANNED REDUCTION IN CRIME IS TO BE EFFECTED THROUGH THE DEVELOPMENT OF CRIME SPECIFIC PROGRAMS. THE CRIME ANALYSIS TEAM (C.A.T.) WILL GATHER AND CORRELATE PERTINENT INFORMATION AND STATISTICS. THIS DATA WILL THEN BE ANALYZED AND EVALUATED TO IDENTIFY SPECIFIC PROBLEM AREAS AND TO DEVELOP RECOMMENDATION FOR THE STRUCTURE OF PROGRAMS TO DEAL WITH THE PROBLEMS IDENTIFIED. THE C.A.T. WILL ALSO DEVELOP NEW PROJECTS, ASSIGN PRIORITIES FOR PROJECT ACCOMPLISHMENT, AND EVALUATE THE RESULTS OF FUNDED PROJECTS. ANOTHER ESSENTIAL RESPONSIBILITY OF THIS TEAM IS THE DETERMINATION FOR CITY OF PHILDELPHIA PURPOSES, OF CRIMINAL JUSTICE FUNDING SOURCES OTHER THAN LEAA. THE LEAA PROJECT FUNDS PROVIDE FOR THE SALARIES OF THE 11 MEMBERS OF THE C.A.T. AND OFFICE EQUIPMENT AND SUPPLIES. THIS AWARD OF $200,000 IS MADE UNDER THE NATIONAL SCOPE PROGRAM AS DESCRIBED IN THE LEAA FY 1972 GUIDE FOR DISCRETIONARY GRANT PROGRAMS AND AS AUTHORIZED BY P.L. 90-351, AS AMENDED.

TITLE:
NORTH CENTRAL/ NORTHWEST PHILADELPHIA STRIKE FORCE

AWARD AMOUNT:
$782,205

FUNDING HISTORY:
0 72 DF $782,205

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT
8TH & RACE STREETS
PHILADELPHIA, PA 19106

GRANT NO.:
72DF030038

PROJECT DIRECTOR:
JOHN CRAIG

PROJECT SUMMARY:
THIS DEMONSTRATION PROJECT PROVIDES FOR A STRIKE FORCE OF 64 PLAINCLOTHES POLICEMEN TO OPERATE IN NORTH CENTRAL AND NORTHWEST PHILADELPHIA (22ND, 23RD, AND 39TH POLICE DISTRICTS). THE GOAL OF THE STRIKE FORCE TEAM IS TO STOP THE INCREASE IN BURGLARY AND ROBBERY IN THE PROJECT YEAR. PHILADELPHIA PLANS TO CREATE A "MOBILE POLICE DISTRICT" TO BETTER UTILIZE OUR 64 MEMBER STRIKE FORCE TEAM. THE PLAINCLOTHESMEN WILL BE RESPONSIBLE ONLY FOR PREVENTIVE PATROL IN UNMARKED VEHICLES, INVESTIGATION OF KNOWN OFFENDERS OR SUSPECT INDIVIDUALS, AND SURVEILLANCE OF BUSINESS AND RESIDENTIAL PROPERTIES TO REDUCE BURGLARY AND ROBBERY. THE STRIKE FORCE MEMBERS WILL NOT BE USED FOR PURPOSES OTHER THAN THE REDUCTION OF IMPACT CRIME. THE WORK SCHEDULE OF THE TEAM WILL BE HIGHLY FLEXIBLE SO THAT THE TEAM CAN BETTER RESPOND TO CHANGING PATTERNS OF CRIME AND SPECIFIC PROBLEM AREAS AS THEY ARE IDENTIFIED. LEAA PROJECT FUNDS WILL BE UTILIZED FOR THE SALARIES AND SUPPORT EQUIPMENT OF THE 64 POLICE OFFICERS.

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LEAA NON-BLOCK GRANTS
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

TITLE:
AIRPORT SECURITY PROJECT

AWARD AMOUNT:
$5,534

FUNDING HISTORY:
0 72 DF $5,534

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT.
FRANKLIN SQUARE
PHILADELPHIA, PA. 19106

GRANT NO.:
72DF991014

PROJECT DIRECTOR:
RICHARD BRIDGEFORD, CHIEF INSPECTOR

PROJECT SUMMARY:
EQUIP. PURCHASED CENTRALLY. NO DRAWDOWN OF FUNDS ALLOWED. THE PRESIDENT HAS STATED THAT THE RESPONSIBILITY FOR SAFEGUARDING THE NATION'S AIR SYSTEM IS "PROPERLY SHARED BY THE FEDERAL GOVERNMENT, AIRLINES, AIRPORTS AND LOCAL LAW ENFORCEMENT AGENCIES." IN RECENT MONTHS THE NUMBER OF INCIDENTS OF AIRCRAFT HIJACKING HAS INCREASED AT AN ALARMING RATE. THE EQUIPMENT WILL BE CENTRALLY PURCHASED AND SHIPPED THE GRANTEE BY THE MANUFACTURER. IT IS ANTICIPATED THAT THIS EQUIPMENT IN CONSORT WITH THE AIR CARRIER AND AIRPORT SECURITY REGULATIONS RECENTLY PROMULGATED BY THE FEDERAL AVIATION ADMINISTRATION WILL SIGNIFICANTLY REDUCE THE INCIDENCE OF AIR PIRACY. THIS GRANT HAS BEEN MADE PURSUANT TO PART C, TITLE I OF P.L. 90-531, AS AMENDED.

TITLE:
NORTHWESTERN STRIKE FORCE

AWARD AMOUNT:
$1,000,000

FUNDING HISTORY:
0 73 DF $1,000,000

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT
8TH & RACE STS.
PHIL, PA 19106

GRANT NO.:
73DF033010

PROJECT DIRECTOR:
INSPECTOR JOHN A CRAIG

PROJECT SUMMARY:
A POLICE STRIKE FORCE WILL BE ESTABLISHED TO PATROL NORTHWESTERN PHILADELPHIA TO CONTROL AND REDUCE BURGLARY AND ROBBERY BY 10% AND 15% RESPECTIVELY. IT IS ALSO ANTICIPATED THAT THERE WILL BE A 5% DECREASE IN ALL PART I CRIMES IN ADDITION TO A 5% INCREASE IN THE PART I CLEARANCE RATE. IT IS ALSO EXPECTED THAT THE MOUNTING FEAR OF CRIME AND NEIGHBORHOOD DETERIORATION WILL BE REVERSED IN THIS AREA. THE STRIKE FORCE WILL BE COMPOSED OF 55 VETERAN POLICEMEN, SEVEN (7) SUPERVISORY OFFICERS (ONE CAPTAIN, ONE LIEUTENANT, AND FIVE (5) SERGEANTS) WITH A CAPTAIN IN DIRECT CHARGE REPORTING TO AN INSPECTOR WHO HAS OTHER TASK FORCE RESPONSIBILITIES. THE POLICE OFFICERS WILL OPERATE IN NONDESCRIPT, CARS AND TRUCKS AND CORRESPONDING PLAINCLOTHES AND VARY THEIR TIME AND AREA ASSIGNMENT AS INDICATED BY PERIODIC CRIME ANALYSES. FORTY (40) PORTABLE RADIOS WILL PROVIDE COMMUNICATIONS AND THE STRIKE FORCE MEMBERS WILL BE GIVEN THREE (3) WEEKS OF SPECIAL TACTICAL TRAINING BEFORE STARTING ON THE 12-MONTH PROJECT PERIOD.

TITLE:
PUBLIC TRANSIT CRIME REDUCTION PROGRAM

AWARD AMOUNT:
$1,000,000

FUNDING HISTORY:
0 73 DF $1,000,000

GRANTEE NAME AND ADDRESS:
PHILADELPHIA DEPT OF POLICE
8TH & RACE STS.
PHIL, PENN 19106

GRANT NO.:
73DF033024

PROJECT DIRECTOR:
JOHN A. CRAIG, INSPECTOR

PROJECT SUMMARY:
THIS PROJECT WILL EXPAND THE PHILADELPHIA POLICE TRANSIT UNIT TO DETER PART I-PART II CRIMES, ENSURE SWIFT APPREHENSION, REVERSE RIDERSHIP DECLINE, AND MAXIMIZE THE MASS TRANSIT NETWORK BY THE USE OF SIXTY PATROLMEN (THIRTY K-9 UNITS CAR DOG AND ONE PATROLMAN - AND THIRTY PATROLMEN UTILIZING UNDERCOVER TECHNIQUES) SUPERVISED BY ONE LIEUTENANT AND FOUR SERGEANTS. THESE SPECIALLY TRAINED POLICE WILL UTILIZE TWENTY SEVEN PORTABLE RADIOS, THREE SPECIAL SUBWAY-PATROL VEHICLES, ONE STOCK COLORED SEDAN, AND ONE REGULAR

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PATROL VEHICLE IN PATROLLING THE WEST MASS-TRANSIT SYSTEM. IT IS EXPECTED THAT THERE WILL BE A 5% PART I CRIME DECREASE, A 5% PART I CRIME CLEARANCE RATE INCREASE, A 10% PART II CRIME DECREASE WITH A 10% CLEARANCE INCREASE REVERSING THE DECREASE IN RIDERSHIP. A CAREFUL ANALYSIS OF ALL FACTORS INVOLVED (CRIME, ECONOMICS INCLUDING GOVERNMENT AND BUSINESS, AND THE FEAR OF CRIME) INDICATE THAT THIS PROGRAM IS NECESSARY FOR THE SURVI VAL AND FUTURE DEVELOPMENT OF THE CITY.

TITLE:
DRUG ENFORCEMENT ADMINISTRATION- TASK FORCE

AWARD AMOUNT:
$444,868

FUNDING HISTORY:
0 74 NI $444,868

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT
COUNTY OF PHILADELPHIA
PHILADELPHIA, PA. 19107
TEL.(215)MU62160

GRANT NO.:
74NI030002

PROJECT DIRECTOR:
WILLIAM J. CORCORAN

PROJECT SUMMARY:
THIS IS A CONTINUATION OF D/F #73-NI-03-0001. THE PROJECT IS RESPONSIBLE FOR IMPLEMENTING AN ATTACT ON HEROIN TRAFFIC AS PART OF A NATIONWIDE ENFORCEMENT EFFORT. THE PROGRAM IS HEADED BY A REGIONAL COUNSEL, WHO SUPERVISES ATTORNEY AND INVESTIGATOR TEAMS COMPRISED OF LOCAL, STATE AND FEDERAL PERSONNEL. UPON THE REORGANIZATION OF ALL AGENCIES CHARGED WITH THE ENFORCEMENT OF FEDERAL LAWS PERTAINING TO NARCOTICS, A NEW AGENCY WAS CREATED AS OF JULY 1, 1973. THIS PROJECT WAS INCORPORATED INTO THE NEW AGENCY WHICH IS NOW KNOWN AS THE DRUG ENFORCEMENT ADMINISTRATION. THE PURPOSE OF THIS GRANT IS TO CONTINUE THE EXPANSION OF THE FEDERAL ROLE IN THE ENFORCEMENT OF THE NARCOTIC AND DANGEROUS DRUG LAWS AT THE STREET LEVEL WITH THE ULTIMATE GOAL OF ELIMINATING THE MIDDLE LEVEL PUSHER.

TITLE:
DRUG ENFORCEMENT ADMINISTRATION TASK FORCE

AWARD AMOUNT:
$155,132

FUNDING HISTORY:
0 74 NI $155,132

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT
303 WALNUT STREET SUITE 300
PHILADELPHIA, PENNSYLVANIA 19106

GRANT NO.:
74NI030003

PROJECT DIRECTOR:
ARTHUR LEWIS, WILLIAM OLIVANTE

PROJECT SUMMARY:
THIS IS A SUPPLEMENTAL GRANT NO. 73-NI-03-0001, ($484,000). THESE FUNDS WILL PROVIDE FOR EXPENSES INCURRED DURING GRANT PERIOD UP TO OCTOBER 31, 1973, WHICH WERE UNPAID DUE TO THE TRANSFER OF FUNDS TO LOS ANGELES, CALIFORNIA.

TITLE:
NORTH CENTRAL/NORTHWEST PHILADELPHIA STRIKE FORCE

AWARD AMOUNT:
$1,000,000

FUNDING HISTORY:
0 75 OF $1,000,000

GRANTEE NAME AND ADDRESS:
CITY OF PHILADELPHIA POLICE DEPARTMENT
8TH AND RACE STREET
PHILADELPHIA, PENNSYLVANIA 19106

GRANT NO.:
75OF030020

PROJECT DIRECTOR:
JOHN CRAIG

PROJECT SUMMARY:
THIS IS A CONTINUATION PROJECT OF A STRIKE FORCE THAT IN ITS FIRST SIX MONTHS OF OPERATION IN 1973 SHOWED A 28.8% AND A 38.3% REDUCTION IN ROBBERIES AND BURGLARIES RESPECTIVELY, WHICH ARE THE TARGETED CRIMES. IT IS EXPECTED THAT THERE WILL BE AN ADDITIONAL 8% REDUCTION IN THESE TWO CRIMES DURING THE LIFE OF THE PROJECT. FUNDING WILL PROVIDE FOR A STAFF OF [illegible]

DETECTIVES. THE SUBGRANTEE WILL CONTRIBUTE THE SERVICES OF FOUR SERGEANTS, ONE LIEUTENANT, AND ONE CAPTAIN WHO WILL SUPERVISE AND DIRECT THE PERSONNEL. THEY WILL BE DIVIDED INTO FOUR SQUADS FOR A NORMAL 24-HOUR COVERAGE BUT THE HOURS OF ASSIGNMENT WILL BE BASED ON A COMPUTER ANALYSIS OF THE CRIME STATISTICS FOR THE AREA COVERED - THE 22ND, 23RD, AND 19TH PATROL DISTRICTS. THE STRIKE FORCE WILL USE A MIX OF MARKED AND UNMARKED VEHICLES INCLUDING TRUCKS, TAXIS, ETC., AND WILL EMPLOY ROUTINE, CONCENTRATED, SPECIALIZED, AND SURVEILLANCE PATROL. THIS AWARD IS MADE UNDER TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, P. L. 90-351, AS AMENDED, IN THE AMOUNT OF $1,000,000.

TITLE:
CRIME REDUCTION PROGRAM FOR WEST PHILADELPHIA

AWARD AMOUNT:
$970,370

FUNDING HISTORY:
0 75 OF $970,370

GRANTEE NAME AND ADDRESS:
CITY OF PHILADELPHIA POLICE DEPARTMENT
8TH AND RACE STREETS
PHILADELPHIA, PENNSYLVANIA 19106

GRANT NO.:
75DF030021

PROJECT DIRECTOR:
MR. JOHN CRAIG

PROJECT SUMMARY:
THIS IS A CONTINUATION PROJECT OF THE CRIME REDUCTION PROGRAM FOR WEST PHILADELPHIA THAT IN ITS FIRST SIX MONTHS OF OPERATION IN 1974 SHOWED A REDUCTION OF 33% AND 24.3% RESPECTIVELY IN ROBBERY AND BURGLARY, THE TARGETED CRIMES. IT IS EXPECTED THAT THESE TWO CRIMES WILL BE REDUCED AN ADDITIONAL 8% DURING THE LIFE OF THE PROJECT. FUNDING WILL PROVIDE FOR 50 VETERAN POLICEMEN AND WILL UTILIZE SPECIALIZED EQUIPMENT INCLUDING DISGUISE PARAPHERNALIA (BEARDS, MUSTACHES, ETC.). THESUBGRANTEE WILL CONTRIBUTE THE SUPERVISORY PERSONNEL: 1 LIEUTENANT, AND 6 SERGEANTS. THE CRIME REDUCTION UNIT IS STRUCTURED TO OPERATE ON A 24 HOUR BASIS BUT ASSIGNMENTS ARE MADE ON A TACTICAL BASIS USING A COMPUTER STATISTICAL ANALYSIS PLUS MEETINGS WITH ALL CONCERNED. RESIDES CONCENTRATING ON ROBBERY AND BURGLARY THERE IS ALSO A MAJOR FOCUS ON NARCOTICS AS IT RELATES TO THESE TWO AND OTHER SERIOUS CRIMES IN THE ASSIGNED AREAS--THE 12TH 18TH 18TH AND 19TH PATROL DISTRICTS. THE UNIT WILL USE ROUTINE, CONCENTRATED, SPECIALIZED, AND SURVEILLANCE PATROL. THIS AWARD IS MADE UNDER TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, P.L. 90-351, AS AMENDED, IN THE AMOUNT OF $970,370.

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Best Copy Available

BE USED TO TRAIN LAB PERSONNEL IN THE OPERATIONS AND MAINTENANCE OF THIS EQUIPMENT.

MANAGEMENT ANALYSIS AND PLANNING UNIT

GRANTEE NAME AND ADDRESS:
NY CITY DEPARTMENT OF INVESTIGATIONS
C/O ST OF NY, DIV OF CRIM JUSTICE SERVS
250 BROADWAY, 10TH FLOOR
NEW YORK, NY 10007

AWARD AMOUNT: $102,622

LEAA GRANT NUMBER: 74A36R0053

STATE GRANT NUMBER: 81019/74 1747

PROJECT SUMMARY:
THE NEW YORK CITY DEPARTMENT OF INVESTIGATIONS PROPOSES TO CREATE A BUREAU OF MANAGEMENT, ANALYSIS AND PLANNING WITHIN ITS OFFICE WHICH WOULD, UNDER THE DIRECTION OF A BUSINESS MANAGER, BE RESPONSIBLE FOR ANALYZING AND IMPROVING INTERNAL SYSTEMS OF PAPER FLOW, RECORD KEEPING, STAFF SUPERVISION AND SPACE UTILIZATION.

STATE: PENN

CITY: PHILADELPHIA

Best Copy Available

JUVENILE AID DIVISION EXPANSION

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPARTMENT
FRANKLIN SQUARE
PHILADELPHIA, PA 19106

AWARD AMOUNT: $317,233

LEAA GRANT NUMBER: 72A42R0014

STATE GRANT NUMBER: PH-171-72A

PROJECT SUMMARY:
DURING THE RECENT YEARS, PHILADELPHIA HAS BEEN PLAGUED BY A TREMENDOUS NUMBER OF JUVENILE CRIMES AND PARTICULARLY, GANG RELATED CRIMES. TO COPE WITH THIS PROBLEM, IT IS PROPOSED THAT THE JUVENILE AID DIVISION BE EXPANDED BY THE ADDITION OF 23 OFFICERS, WHO WILL BE ASSIGNED AS LIAISON OFFICERS WORKING WITH THE DETECTIVE BUREAU. THEY WILL CONCENTRATE ON JUVENILE CRIMES AND ESPECIALLY GANG-RELATED CRIMES. THE ADDITIONAL OFFICERS WILL RESULT IN BETTER QUALITY INVESTIGATIONS AND SUBSEQUENTLY A HIGHER CLEARANCE RATE OF JUVENILE CRIMES. EXPANSION OF THE JUVENILE AID DIVISION WILL ENABLE MORE MAN HOURS TO BE DEVOTED TO STREET PATROL TO PREVENT JUVENILE CRIMES AND GANG-RELATED ACTIVITIES. TEN (10) OF THE 23 OFFICERS WILL BE WOMEN.

CLOSED CIRCUIT TELEVISION COMMUNICATIONS - PHASE III

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPARTMENT
FRANKLIN SQUARE
PHILADELPHIA, PA 19106

AWARD AMOUNT:
$170,844

LEAA GRANT NUMBER:
72A42P0016

STATE GRANT NUMBER:
PH-168-72A

PROJECT SUMMARY:
THIS APPLICATION REPRESENTS A THIRD-YEAR CONTINUATION OF THE POLICE DEPARTMENT'S CCTV PROGRAM (PH-055-71A). THE CURRENT PROJECT HAS BEEN EVALUATED BY COUNCIL'S PLANNING DIRECTOR, WHO RECOMMENDS APPROVAL OF THIS CONTINUATION. IN PHASE I OF THE PROJECT, AN EXPERIMENTAL "PILOT" MICROWAVE CCTV LINK WAS INSTALLED BETWEEN THE POLICE ADMINISTRATION BUILDING AND ONE (1) POLICE DIVISION HEADQUARTERS BUILDING (SOUTH DIVISION) TO PERMIT TESTING EQUIPMENT AND PROCEDURES FOR THE FINAL SYSTEM DESIGN. PHASE II OF THE PROJECT CALLS FOR FINALIZING THE SYSTEM DESIGN AND INSTALLING THE SYTEM INTO FIVE (5) POLICE DIVISION HEADQUARTERS BUILDINGS. PHASE II IS SCHEDULED FOR COMPLETION BY JUNE, 1973. THIS APPLICATION REPRESENTS PHASE III OF THE PROJECT AND WILL PROVICE FOR EXPANDING THE SYSTEM TO ALL NINE (9) POLICE DIVISIONHEADQUARTERS BUILDINGS.

HUMAN RELATIONS TRAINING FOR POLICE (AT TEMPLE UNIVERSITY)

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPT.
FRANKLIN SQUARE
PHILADELPHIA, PA 19106

AWARD AMOUNT:
$26,196

LEAA GRANT NUMBER:
72A42R0336

STATE GRANT NUMBER:
PH-082-72A

PROJECT SUMMARY:
THIS IS A CONTINUATION REQUEST FOR SUB-GRANT (#FO-A-017-71) WHICH PROVIDED A HUMAN RELATIONS TRAINING COURSE FOR PHILADELPHIA POLICE PERSONNEL AT TEMPLE UNIVERSITY, FROM JULY 1, 1971 - JUNE 30, 1972. THE COURSE WAS DESIGNED TO GIVE POLICE RECRUITS AND IN-SERVICE PERSONNEL A BACKGROUND IN COMMUNITY RELATIONS AND HUMAN RESPONSE. THE GOAL OF THE PROGRAM WAS TO BETTER UNDERSTAND THE VARIOUS PROBLEMS THAT ARISE IN THE MODERN URBAN COMMUNITY. IT IS BELIEVED THAT OFFICERS RECEIVING SAID TRAINING WILL BE BETTER PREPARED TO COPE WITH FIELD SITUATIONS--THEREBY BETTER SERVING THE POLICE DEPARTMENT AND THE COMMUNITY.

NEIGHBORHOOD ANTI-BURGLARY PROJECT

Best Copy Available

GRANTEE NAME AND ADDRESS:
PHILADELPHIA CITY POLICE DEPARTMENT
8TH AND RACE ST.
PHILADELPHIA, PA 19106

AWARD AMOUNT:
$120,984

LEAA GRANT NUMBER:
72A42R0354

STATE GRANT NUMBER:
PH-122-72A

PROJECT SUMMARY:
THE PHILADELPHIA POLICE DEPARTMENT PROPOSES TO CONTRACT WITH THE CRIME COMMISSION OF PHILADELPHIA, A PRIVATE, NON-PROFIT EDUCATIONAL ORGANIZATION, TO JOIN IN A YEAR LONG PROGRAM TO REDUCE THE INCIDENCE OF BURGLARY OR AT LEAST TO LOWER THE RATE OF INCREASE. VOLUNTEERS SELECTED FROM A TARGET AREA OF THE CITY WILL BE TRAINED TO TEACH HOUSEHOLDERS AND SMALL MERCHANTS HOW THEY CAN PROTECT THEMSELVES AND THEIR PREMISES AGAINST BURGLARY. TRAINING, THE USE OF DESCRIPTIVE MATERIAL, PROTOTYPE SECURITY DEVICES AND PUBLIC EDUCATION PROGRAMS WILL PROVIDE THE BASIS FOR SUBSEQUENT DIRECT ASSISTANCE FROM SPECIALLY TRAINED POLICE. THE MAJOR OBJECTIVE OF THE NEIGHBORHOOD ANTI-BURGLARY PROJECT (NAB) IS TO DEMONSTRATE WITHIN A SELECTED TARGET AREA, THAT MAJOR BURGLARY PREVENTATIVE RESOURCES ARE WITHIN THE CAPACITY OF EACH CITIZEN. VALIDATION OF THE ASSUMPTION THAT THE INCIDENCE OF BURGLARY CAN BE REDUCED THROUGH THE PROJECT SHOULD LEAD TO BROAD APPLICATION OF THE METHOD THROUGHOUT THE CITY.

Best Copy Available

NARCOTICS TRAINING FOR POLICEMEN

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPARTMENT
FRANKLIN SQUARE
PHILADELPHIA, PA 19106

AWARD AMOUNT: $32,225

LEAA GRANT NUMBER: 72A42R0358

STATE GRANT NUMBER: PH-144-72A

PROJECT SUMMARY:
THE COURSE, CONSISTING OF 17 HOURS OF LECTURE AND 64 HOURS OF CLINICAL TRAINING, IS DESIGNED TO BETTER ACQUAINT THE POLICEMAN WITH BOTH NARCOTICS AND THE NARCOTICS ADDICT. HE WILL LEARN TO IDENTIFY NARCOTICS BY SIGHT, SMELL AND OTHER CHARACTERISTICS. HE WILL GET TO KNOW THE ADDICT, HOW TO IDENTIFY HIM AND HOW TO RESPOND TO HIM. BY WORKING WITH THE ADDICT IN THE IN-PATIENT AND OUT-PATIENT CLINICS, HE WILL BETTER UNDERSTAND THE SOCIAL FORCES THAT CONTRIBUTE TO ADDICTION AND HOW TO HANDLE THE ADDICT. THE KNOWLEDGE GAINED IN THIS COURSE WILL ENABLE THE POLICEMAN TO BETTER DISCHARGE HIS RESPONSIBILITIES WHERE THE NARCOTICS ADDICT IS CONCERNED. AN ANCILLARY BENEFIT WILL BE AN UP-GRADING OF POLICE/COMMUNITY RELATIONS.

MINORITY GROUP CULTURAL TRAINING

GRANTEE NAME AND ADDRESS:
PHILADELPHIA POLICE DEPARTMENT
FRANKLIN SQUARE
PHILADELPHIA, PA 19106

AWARD AMOUNT: $29,296

LEAA GRANT NUMBER: 72A42R0359

STATE GRANT NUMBER: PH-146-72A

PROJECT SUMMARY:
THE COURSE IS TO PROVIDE IN-SERVICE TRAINING FOR POLICE OFFICERS AT TEMPLE UNIVERSITY. IT IS DESIGNED TO BETTER PREPARE OFFICERS FOR ASSIGNMENT TO LARGELY BLACK AND SPANISH-SPEAKING AREAS. THE COURSE WILL PROVIDE INSTRUCTION IN THE HISTORY, CUSTOMS, FAMILY STRUCTURE, ECONOMICS, AND SOCIOLOGY OF MINORITY CULTURES. THE GOAL OF THE PROJECT IS TO REDUCE TENSIONS AND IMPROVE UNDERSTANDING BETWEEN POLICE OFFICERS AND MINORITY GROUPS.

HIGH SPEED INFORMATION AND RETRIEVAL SYSTEM

GRANTEE NAME AND ADDRESS:
CITY AND COUNTY OF PHILADELPHIA P D
FRANKLIN SQUARE
PHILADELPHIA, PA

AWARD AMOUNT: $62,961

LEAA GRANT NUMBER: 73A42R0258

STATE GRANT NUMBER: PH-187-73A

PROJECT SUMMARY:
THIS IS A NEW APPLICATION FOR REPLACEMENT OF EXISTING OBSOLETE RECORDING EQUIPMENT IN THE POLICE RADIO ROOM. AT THE PRESENT TIME REPLACEMENT PARTS ARE UNAVAILABLE OR PROHIBITIVELY EXPENSIVE CAUSING EXCESSIVE "DOWNTIME" OF RECORDING EQUIPMENT. RETRIEVAL OF VITAL DATA ON TAPES REQUIRES A DISPROPORTIONATE AMOUNT OF MANPOWER. THE VOICE REPRODUCTION OF THIS EQUIPMENT IS OF SUCH POOR QUALITY THAT IT PRECLUDES ITS USE FOR VOICE PRINTING AND IDENTIFICATION OF KNOWN CALLERS. THIS NEW RECORDING AND RETRIEVAL SYSTEM WILL ENABLE THE POLICETO QUICKLY LOCATE, RETRIEVE, AND REPRODUCE SOURCE DATA FOR CRIMINAL INVESTIGATIONS AND COURT APPEARANCE.

MOVIES-IN-THE-STREETS PROGRAM

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
PHILADELPHIA POLICE DEPARTMENT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$15,000	73A42R0325	PH-204-73A

PROJECT SUMMARY:
THIS PROGRAM IS A SECOND-YEAR CONTINUATION OF "MOVIES IN THE STREETS." THE PROJECT OPERATES WITHIN THE POLICE DEPARTMENT COMMUNITY RELATIONS UNIT AND INVOLVES THE SHOWING OF FULL-LENGTH FEATURE FILMS OUTDOORS IN LOCAL NEIGHBORHOODS IN THE SUMMER, AND INDOORS TO COMMUNITY CIVIC AND RELIGIOUS GROUPS DURING THE YEAR. THE PROGRAM IS DESIGNED TO IMPROVE UNDERSTANDING AND COOPERATION BETWEEN THE POLICE DEPARTMENT AND THE COMMUNITY IT SERVES.

PARTICIPATION IN/ESTAB/EXPANSION OF POL TRNG PGMS AND/OR FAC

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILADELPHIA/POLICE DEPARTMENT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$846	73A42R1091	PH-331-73A

PROJECT SUMMARY:
THIS PROGRAM CONSISTS OF ADVANCED ONE WEEK SEMINARS IN POLICE EXECUTIVE DEVELOPMENT. IT IS OPENED ONLY TO THOSE WHO HAVE GRADUATED FROM THE POLICE EXECUTIVE DEVELOPMENT INSTITUTES. THESE ADVANCED SEMINARS WILL EXPAND UPON MANAGERIAL TECHNIQUES AND COMPONENTS OF ORGANIZATIONAL THEORY.

NEIGHBORHOOD ANTI-BURGLARY PROGRAM CONTINUATION

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILADELPHIA/POLICE DEPARTMENT 8TH AND RACE STREETS PHILADELPHIA, PA 19106	$108,187	74A42R0103	PH-74-C-P01-5-269

PROJECT SUMMARY:
THIS IS A SECOND YEAR CONTINUATION OF THE NEIGHBORHOOD ANTIBURGLARY PROGRAM (PH-122-72A). THIS PROJECT IS A JOINT EFFORT OF THE CRIME COMMISSION OF PHILADELPHIA AND THE PHILADELPHIA POLICE DEPARTMENT, WHICH IS DESIGNED TO DEMONSTRATE WITHIN A SELECTED TARGET AREA, THAT MAJOR BURGLARY PREVENTATIVE RESOURCES ARE WITHIN THE CAPACITY OF EACH CITIZEN. THE PURPOSE OF THE PROGRAM IS TO REDUCE THE INCIDENCE OF BURGLARY IN THE TARGET AREA.

Best Copy Available

HUMAN RELATIONS TRAINING PROGRAM

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILADELPHIA/POLICE DEPARTMENT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$29,135	74A42R0104	PH-74-C-A12-5-26R

PROJECT SUMMARY:
THIS PROGRAM IS A FOURTH YEAR CONTINUATION OF PH-209-73A, HUMAN RELATIONS TRAINING PROGRAM. THIS TRAINING PROGRAM AT TEMPLE UNIVERSITY IS DESIGNED TO GIVE POLICE RECRUITS AND VETERAN OFFICERS A BACKGROUND IN COMMUNITY RELATIONS AND HUMAN RESPONSE. THE GOAL OF THE PROGRAM HAS BEEN TO PROVIDE POLICE OFFICERS WITH A BETTER UNDERSTANDING OF HUMAN NATURE WHICH WILL HELP THE POLICEMAN TO BETTER SERVE THE COMMUNITY AND THE POLICE DEPARTMENT.

JUVENILE AID DIVISION EXPANSION

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILA/PHILADELPHIA POLICE DEPT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$84,865	74A42R0129	PH-74-C-005-5-29R

PROJECT SUMMARY:
THIS IS A SECOND YEAR CONTINUATION OF THE JUVENILE AID DIVISION, PH-171-72A. THE EXPANSION OF THE JUVENILE AID DIVISION PROGRAM CONSISTS OF THIRTEEN ADDITIONAL POLICEMEN AND 10 POLICEWOMEN. THE 13 MEN ARE ASSIGNED AS LIAISON OFFICERS WORKING WITH THE DETECTIVE BUREAU, AND THE 10 WOMEN ARE ASSIGNED TO NORMAL JUVENILE AID DIVISION ACTIVITIES. THEY HAVE CONCENTRATED ON JUVENILE CRIME AND ESPECIALLY GANG RELATED CRIMES.

MINORITY GROUP CULTURAL TRAINING

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILADELPHIA/POLICE DEPARTMENT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$27,140	74A42R0130	PH-74-C-A12-5-28I

PROJECT SUMMARY:
THIS IS A SECOND YEAR CONTINUATION OF MINORITY GROUP CULTURAL TRAINING (PH-146-73A). THIS COURSE AT TEMPLE UNIVERSITY IS TO PROVIDE TRAINING FOR VETERAN POLICE OFFICERS TO BETTER PREPARE THEM FOR ASSIGNMENTS TO LARGELY BLACK AND SPANISH-SPEAKING AREAS. IT PROVIDES INSTRUCTIONS IN THE HISTORY, CUSTOMS, FAMILY STRUCTURE, ECONOMICS AND SOCIOLOGY OF MINORITY CULTURES. THE GOAL OF THIS PROGRAM IS TO REDUCE TENSIONS AND IMPROVE UNDERSTANDING BETWEEN POLICE OFFICERS AND MINORITY GROUPS.

Best Copy Available

PROVISION OF NEW OR REORGANIZATION OF EXIST POLICE FUNCTIONS

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILA/PHILADELPHIA POLICE DEPT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$493,289	74A42R0328	PH-74-C-005-S-309

PROJECT SUMMARY:
THE FUNDS WILL BE USED TO CONTINUE THE INSTALLATION OF THE PHILADELPHIA POLICE CLOSED CIRCUIT TELEVISION COMMUNICATIONS SYSTEM. THIS GRANT REQUEST IS FOR PHASE IV OF THE PROJECT, WHICH WILL EXPAND THE SYSTEM TO TEN POLICE DISTRICT LOCATIONS, THAT ARE NOT SET IN THE SYSTEM. THE FINAL POLICE CCTV COMMUNICATIONS SYSTEM WILL BE USED TO HELP ALLEVIATE A WIDE RANGE OF PROBLEMS IN THE AREAS OF TRAINING, POLICE OPERATIONS AND ADMINISTRATIVE USES.

MOVIES-IN-THE-STREETS PROGRAM

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CITY OF PHILADELPHIA/PHILA POLICE DEPT FRANKLIN SQUARE PHILADELPHIA, PA 19106	$14,500	74A42R0521	PH-74-C-100-S-338

PROJECT SUMMARY:
THE PHILADELPHIA POLICE DEPARTMENT WISHES TO CONTINUE FOR AN ADDITIONAL YEAR THE MOVIE-IN-THE-STREETS PROGRAM. THE POLICE COMMUNITY RELATIONS BUREAU IS RESPONSIBLE FOR THE ADMINISTRATION AND OPERATION OF THIS PROGRAM, WHICH INVOLVES THE SHOWING OF FULL LENGTH, POPULAR FEATURE FILMS OUTDOORS IN LOCAL AREAS DURING THE SUMMER MONTHS, AND INDOORS TO CIVIC, RELIGIOUS, AND COMMUNITY GROUPS THROUGHOUT THE YEAR. THE PROGRAM IS DESIGNED TO CURB POSSIBLE VIOLENCE DURING THE SUMMER MONTHS, TO IMPROVE THE COOPERATION AND DEVELOP A MORE DESIRABLE UNDERSTANDING BETWEEN THE COMMUNITY AND THE POLICE. THE PROGRAM HAS ENJOYED WIDE COMMUNITY ACCEPTANCE AND IS A POSITIVE FACTOR IN THE BUILDING OF A BETTER RELATIONSHIP BETWEEN THE COMMUNITY AND POLICE.

CRISIS INTERVENTION TEAM

GRANTEE NAME AND ADDRESS:	AWARD AMOUNT:	LEAA GRANT NUMBER:	STATE GRANT NUMBER:
CTY PHIL/DEPT PUB WEL/CRISIS INTVEN TEAM CITY HALL ANNEX - ROOM 829 PHILADELPHIA, PA 19102	$121,331	74A42R0690	PH-74-C-801-S-387

PROJECT SUMMARY:
THE CRISIS INTERVENTION TEAM NETWORK IS A JOINT EFFORT OF SEVERAL AGENCIES DESIGNED TO MINIMIZE GANG VIOLENCE. THE PARTICIPATING AGENCIES INCLUDE THE PHILADELPHIA BOARD OF EDUCATION, THE PROBATION DEPARTMENT OF THE COURT OF COMMON PLEAS, JUVENILE PROBATION, THE RECREATION DEPARTMENT, THE POLICE DEPARTMENT, THE WELFARE DEPARTMENT, LOCAL HOSPITALS, CHURCHES, YOUTH AND COMMUNITY GROUPS. THE CITY HAS DEVISED THIS NETWORK APPROACH WHICH WILL BE CENTERED IN SPECIFIC AREAS AND DEVOTED TO ELIMINATING VIOLENCE BUT WILL HAVE THE BUILT-IN MOBILITY TO DEAL WITH A POTENTIAL GANG PROBLEM WHEREVER IT MAY BE DEVELOPING. IT HAS ALSO BUILT-IN COMMUNICATION AMONG PROFESSIONALS, COMMUNITY GROUPS, AND INDIVIDUAL CITIZENS WHICH WILL ALLOW FOR DISPERSAL OF INFORMATION THROUGH THE CITY HALL PHONE CENTER.

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JURISDICTION

(Justice Department Has Regulatory Power)

I

This civil rights complaint is filed in accordance with Title VI and Title VII of the Civil Rights Act 42 U.S.C.A. § 2000, *et seq.*, forbidding employment discrimination by state action and pursuant to 42 U.S.C.A. § 3757 empowering LEAA (the Justice Department) to suspend or terminate funding of projects (estimated $1.7 *billion* authorized for 1973) which do not meet the civil rights requirements of the Justice Department's regulations. (See generally, LEAA Equal Rights Guidelines, Federal Register, Vol. 38, No. 46, March 9, 1973.)

II

The Justice Department in enacting the LEAA Equal Employment Opportunity Guidelines recognized the vital role that the elimination of discrimination against minorities plays in achieving effective law enforcement.

> "The experience of LEAA in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968 has demonstrated that *the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act Program to reduce crime and delinquency in the United States.*" § 42.301 Fed. Reg., Vol. 38, No. 46 (1973).

COMPLAINANTS

III

Complainants are: NAACP, Western Region, League of United Latin American Citizens, the American G.I. Forum, the Mexican-American Political Association, National Organization for Women (NOW), Black Women Organized for Action, and the Spanish-Speaking Unity Council.

IV

The aforementioned organizations are considered to be leaders in the State in "seeking to secure equal employment

opportunities based on objective qualifications", and thereby fostering the policy which has been deemed a "necessary component" of effective law enforcement by the Justice Department.

V

These organizations directly represent the interests of more than 12,500,000 Californians.

DEFENDANTS

VI

The defendants are: City of Los Angeles, City of San Diego, City of San Francisco, City of San Jose, City of Oakland, City of Long Beach, City of Sacramento, City of Fresno, City of Glendale, City of Huntington Beach, City of Berkeley, City of Stockton, City of Pasadena, City of San Bernardino, City of Fremont, City of Sunnyvale, City of Hayward, City of Inglewood, and the City of Richmond.

VII

Defendants are all among the thirty (30) most populous cities in the State of California. As such, defendants employ the personnel who bear responsibility for providing police services to more than seven (7) million residents of this State.

VIII

Defendants have all received grants from LEAA within the last two (2) years and are expected to or have submitted grants for the upcoming fiscal year. The total amount of Federal money given to these cities in 1971 and 1972 through the LEAA program is $14,804,974. The funding for each city is shown in the following table:

TABLE I

City	1971 LEAA Funding*	1872 LEAA Funding*	Total Funding 1971-72*
1. Los angeles	$2,494,048	$2,781,826	$5,275,874
2. San Diego	971,820	239,518	1,211,338
3. San Francisco	1,100,343	1,867,931	2,968,274
4. San Jose	—	430	430
5. Oakland	254,069	484,603	738,672
6. Long Beach	301,407	128,695	430,102
7. Sacramento	1,416,151	31,937	1,448,088
8. Fresno	147,122	180,442	327,564
9. Glendale	216,422	64,800	281,222
10. Huntington Beach	112,475	—	112,745
11. Berkeley	53,700	5,248	58,948
12. Stockton	—	163,149	163,149
13. Pasadena	152,521	390,639	543,180
14. San Bernardino	109,705	58,705	168,410
15. Fremont	269,792	—	269,792
16. Sunnyvale	64,397	—	64,397
17. Hayward	47,000	—	47,000
18. Inglewood	210,812	101,118	311,930
19. Richmond	89,677	183,217	272,894
		GRAND TOTAL	$14,694,009

GRAVAMEN OF THE COMPLAINT

IX

Defendants' hiring and promotion practices discriminate against minorities and women and thereby frustrate a "necessary component" of effective implementation of the Omnibus Crime Control and Safe Streets Act of 1968. These practices violate the provisions of Title VI and Title VII of the Civil Rights Act, as amended in 1972, and the Equal Employment Opportunity Guidelines recently published by LEAA. See § 42.301 *et seq.*, Fed. Reg., Vol. 38, No. 46 (1973).

X

Complainants further contend that defendants will not be able to satisfy the non-discrimination requirements of the

*These figures are based on the 1971 and 1972 Annual Reports of the California Council on Criminal Justice.

LEAA Guidelines within one-hundred twenty (120) days of the March 9, 1973 date of the publication as required by the Guidelines; and therefore the funding of defendants' LEAA programs will be subject to termination or suspension (42 U.S.C.A. § 3757) *unless* the relief set forth, *infra*, (Paragraph XI) is immediately instituted.

RELIEF SOUGHT

XI

The relief sought is directed at redressing the grievances of minorities and women who have been the victims of discriminatory personnel practices in the police departments of defendant cities and insuring that defendant LEAA recipients will be able to effectively carry out LEAA programs which include all of the necessary components for reducing crime and delinquency:

FIRST: Convocation of a statewide conference of defendant LEAA recipients and complainants in San Francisco or Los Angeles within forty-five (45) days to pool resources and share ideas on the means available to achieve compliance with the March 9, 1973 LEAA Guidelines.

SECOND: Formal and active LEAA participation within the next twenty (20) days[1] in the Fair Employment Practices Commission's statewide investigation of discrimination against minorities and women in hiring police department personnel.[2] This investigation will focus on the twenty-eight (28) most populous cities in California, nineteen (19) of which have been named as defendants in this complaint, and all of which are current LEAA recipients or likely to be recipients in the future.

THIRD: Immediate elimination of all anti-ability or non-job-related testing in violation of the Equal Employment Opportunity Commission (EEOC) Guidelines (see 42

[1] LEAA's participation must commence within twenty (20) days because the FEPC will conduct a hearing on the final design of the investigation on May 3, 1973, in Los Angeles.

[2] See attached L.A. Times article dated March 14, 1973 describing the complaint which caused the FEPC investigation to be initiated (Exhibit A).

U.S.C.A. § 2000e *et seq.*, as amended in 1972), and the unanimous Supreme Court decision in *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).

FOURTH: Immediate elimination of all non-job-related height requirements which disproportionately disqualify persons of Latin and Asian descent and women from police jobs and thereby violate the 1973 Equal Rights Guidelines of LEAA (see Fed. Reg., Vol. 38, No. 46, March 9, 1973).

FIFTH: Immediate elimination of all formal and informal non-job-related police personnel classifications based on sex.

SIXTH: Termination, or suspension as appropriate, of funding for all LEAA recipients who have not fulfilled LEAA's Equal Opportunity Guidelines or have not filed a satisfactory compliance plan by July 7, 1973 (i.e., 120 days from the promulgation of LEAA's March 9, 1973 Equal Opportunity Guidelines). A satisfactory compliance plan will include a timetable for achievement of population parity in employment of minorities by 1977 and substantial participation of women in all phases of police work for which they can objectively qualify.

DISCRIMINATION AGAINST MINORITIES

XXI

The March 9, 1973 LEAA Guidelines indicate that post-award compliance reviews of LEAA recipients will be initiated upon a finding that there exists a "significant disparity between the percentage of minority persons in the relevant population workforce and the percentage of minority employees in the agency." See Guidelines § 42.306(b). According to LEAA's standards, a "significant disparity" is deemed to exist if "the percentage of a minority group in the employment of the agency is not at least seventy percent (70%) of the percentage of that minority in the workforce population[3] in the relevant geographical area."

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[3]Complainants recommend that the minority workforce population percentage be determined on the basis of the percentage of minorities in the 18–24 age group, the primary age group from which future police candidates will be recruited.

See Guidelines § 42.306(c). The seventy percent (70%) threshhold figure for triggering a LEAA investigation reflects the Justice Department's understanding that underrepresentation of minorities in the police department results in communication gaps which significantly impede effective law enforcement.

XIII

Despite the barriers to successful crime prevention caused by discrimination against minorities, defendant LEAA recipients have refused to employ sufficient numbers of minorities. In Los Angeles, Black and Spanish-Surnamed people constitute more than thirty-six percent (36%) of the population; yet only eleven percent (11%)[4] of the police force are Black or Spanish-surnamed (360 Black and 392 Spanish-surnamed out of 7,037).

XIV

Similarly exclusionary patterns exist in San Diego and San Francisco, the second and third most populous cities in the State. In San Diego, twenty-one percent (21%) of the population is either Black or Brown, but the police department is only six percent (6%)[4] Black or Brown. In San Francisco, the comparable figures are twenty-eight percent (28) and eight percent (8%), (80 Black and 72 Spanish-surnamed out of 1,919).

XV

Discriminatory hiring practices in Oakland, the fifth largest city in the State, have had an even more drastic impact. Black and Spanish-surnamed persons almost constitute a majority (44%), but Blacks and Chicanos only represent nine percent (9%) of the police department (48 Black and 15 Spanish-surnamed out of 717).

XVI

In at least one of the smaller defendant cities, the police department's hiring practices have been absolute in their

[4]See Table II, *infra*, following Paragraph XVII for full statistics.

adverse impact on Spanish-surnamed people. In Richmond, a city which has a Spanish-surnamed population of 7,996, i.e., ten percent (10%) of the city's population, not a single person of Latin origin is employed by the police department.

XVII

All nineteen (19) defendant cities were sent questionnaires requesting data on their minority hiring record. Although approximately one-half of the defendant cities did not respond to the questionnaire (an apparent attempt to conceal their discriminatory record), enough cities did respond to provide a representative sample of discriminatory hiring on the part of California's LEAA recipients. The following table details the pattern of exclusionary hiring:

TABLE II

DISCRIMINATORY RESULTS OF
POLICE DEPARTMENT HIRING PRACTICES

City	Total Population	Total Number of Police	Black Pop. Number (%)	Black Police Number (%)	Black Police As % of the Black % of Workforce*	Spanish-Surnamed Pop. No. (%)	Spanish-Surnamed Police (%)	Span-Surn'd Police as % of Span-Surn'd % of Workforce*
Los Angeles	2,835,600	7,037	503,606 (18%)	360 (5%)	28%	518,791 (18%)	392 (6%)	33%
San Diego	718,100	965	52,961 (8%)	24 (2%)	25%	88,600 (13%)	38 (4%)	31%
San Francisco	703,300	1,927	96,078 (14%)	80 (4%)	29%	101,901 (14%)	72 (4%)	29%
San Jose	471,400	569	10,955 (2%)	8 (1%)	50%	97,637 (12%)	43 (7%)	58%
Oakland	361,561	717	124,710 (34%)	48 (7%)	21%	35,372 (10%)	15 (2%)	20%
Long Beach	358,633	618	18,991 (5%)	20 (3%)	60%	26,073 (6%)	20 (3%)	50%
Sacramento	268,000	595	27,244 (11%)	24 (4%)	36%	32,944 (13%)	35 (6%)	46%
Pasadena	112,981	192	18,256 (16%)	11 (6%)	38%	12,991 (12%)	7 (4%)	33%
Richmond	79,043	151	28,633 (35%)	16 (11%)	31%	7,996 (10%)	ø (ø%)	ø%

* [Minimum 70% required by LEAA] - thus all cities substantially below minimum.

SPECIFIC DISCRIMINATORY PRACTICES AGAINST MINORITIES

XVIII

The nineteen (19) defendant cities screen out Blacks and persons of Latin origin by using discriminatory and unlawful testing mechanisms which are generally non-job related or anti-ability. Many of such tests, upon information and belief, are in violation of the Supreme Court decision in *Griggs v. Duke Power Company* 401 U.S. 424 (1971) and the EEOC Guidelines as amended in 1972.

XIX

The nineteen (19) defendants cities non job-related, discriminatory testing has, upon information and belief, the effect of denying to high ability veterans who are Black or Spanish-surnamed opportunities for jobs that require skills less than those involved in carrying out their previous military responsibilities.

XX

Many of these cities, upon information and belief, rely primarily on the personal contacts of present and former policemen to encourage new applications. The result is that the grossly under-represented Black and Spanish-surnamed communities are inadequately informed of job opportunities in the police department when they arise.

XXI

Long Beach uses a rated oral interview and personal history as part of its selection process. The questions which are asked in the interview and personal history are highly subjective in that they are white-dominated and white-oriented. This aspect of the selection procedure is given a weight of forty percent (40%) in evaluating candidates. (See California Fair Employment Practices Commission § 1421 Investigation of the City of Long Beach—July, 1971.) Rating the oral interview and personal history creates a bias in favor of Anglos. Anglos as a group receive better educations and enjoy greater access to the job market than the

Black and Brown minorities in California. On the other hand, Blacks and Spanish-surnamed persons are likely to score lower because their verbal ability and personal history will reflect the disadvantages and deprivations normally associated with racial and ethnic discrimination. Upon information and belief, many of the defendant cities use oral interviews which are white-dominated and white-oriented to further exclude Blacks and persons of Latin origin from their police departments.

XXII

Police departments in defendant cities use minimum height requirements to disqualify a disproportionate number of Latin and Asian applications.[5] Statistics readily obtainable from the Selective Service Offices in California will document that minimum height requirements place an unequal burden on persons of Latin and Asian origin.

XXIII

The gross under-representation of Blacks and persons of Latin origin resulting from the unlawful employment practices of these cities also contributes to the virtual exclusion of Blacks and persons of Latin origin from the supervisory and command levels of their police departments. In all these cities internal seniority is one of the most important promotion criteria. Inevitably groups which are severely under-represented at the entry level will be similarly under-represented at higher levels.

DISCRIMINATION AGAINST WOMEN

XXIV

As to sex discrimination by the police departments of the nineteen (19) defendants, twelve (12) employ one percent (1%) or less women on their police force. Among the re-

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[5] "Employment Opportunities in Law Enforcement 1972," State of California, Department of Justice, Commission on Peace Officer Standards and Training.

maining seven (7), none employs more than five percent (5%) women.

XXV

The statistics on the number of women employed by these nineteen (19) LEAA recipients also reveal the extreme bias that has been directed at women aspirants for police jobs. The total number of uniformed police personnel employed by these LEAA recipients is 14,750. But of that total, only 303 or 2% are women.

XXVI

The following table illustrates the pattern of sex exclusion that has been established in each and every one of the defendant cities:

TABLE III*

Sex Discrimination In Defendant Police Departments

CITY	TOTAL Uniformed Police	Male Police	(%)	Female Police	(%)
Los Angeles	7,193	6,999	(97%)	194	(3%)
San Diego	1,000	986	(99%)	14	(1%)
San Francisco	1,927	1,918	(99.5%)	9	(.5%)
San Jose	560	548	(98%)	12	(2%)
Oakland	730	723	(99%)	7	(1%)
Long Beach	700	673	(96%)	27	(4%)
Sacramento	529	525	(99%)	4	(1%)
Fresno	311	303	(99%)	3	(1%)
Glendale	160	152	(95%)	8	(5%)
Huntington Beach	147	146	(99%)	1	(1%)
Berkeley	215	204	(95%)	11	(5%)
Stockton	196	189	(95%)	7	(4%)
Pasadena	193	193	(100%)	0	
San Bernardino	186	185	(99.5%)	1	(.5%)
Fremont	103	102	(99%)	1	(1%)
Sunnyvale	180	180	(100%)	0	
Hayward	108	106	(98%)	2	(2%)
Inglewood	147	146	(99%)	1	(1%)
Richmond	165	164	(99.5%)	1	(.5%)

*The statistics in this table were taken from "Employment Opportunities in Law Enforcement 1972" State of California Department of Justice, Commission on Peace Officer Standards and Training and slightly differ from those in Table II due to date differentials.

SPECIFIC DISCRIMINATORY PRACTICES AGAINST WOMEN

XXVII

Discrimination against women begins at the entry level. In Oakland, and upon information and belief, in other defendant cities, women are required to meet higher educational standards than men to qualify as a police department trainee, and then often take different selection exams.[6]

XXVIII

Another barrier to entry, and perhaps the most arbitrary and severely discriminatory one, is the common practice of imposing minimum height and weight requirements. (Statistics showing the adverse impact of these requirements can be obtained from the California Department of Motor Vehicles.) The requirements have been maintained without any systematic inquiry into their relevance to effective police performance by women. As a result of this unquestioned tradition, the majority of the able and willing women candidates for police work in the defendant cities are precluded from even demonstrating their ability in training programs.

XXIX

The women's training programs of defendant cities' police departments also reflect a deliberate scheme of discrimination. Women are normally trained separately from men. Furthermore, the women's training is designed to track women into narrowly defined, specialized fields with limited promotion opportunities. Most women employed by these LEAA recipients are channeled directly into juvenile work or simply relegated to clerical duties.

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[6] Oakland Civil Service's proposed revision, (next hearing April 17 1973) will be even more exclusinary since it sets a 5'7" height minimum for all candidates and, in effect, denies present women police officers promotional opportunities based on past police experience as a basis for future promotions.

XXX

The denial of patrol duty training and experience has a particularly adverse impact on the future promotion opportunities of women police personnel since individuals with patrol experience have the widest range of promotion opportunities within the department and some cities exercise a "Catch-22 clause" by prohibiting women from patrol positions and limiting promotions to those with patrol experience.

XXXI

The clearly sexist rationale for excluding women from patrol duty has been exposed by the experience of European nations and a few American cities. In Britain and Israel women are widely used for patrol duty. Since 1968 in Indianapolis, Indiana and 1971 in Peoria, Illinois, women have been regularly given patrol car assignments. In all cases the experiments have proved so successful that the police chiefs have expanded the role of women as patrol officers.

XXXII

Access to promotional exams has been manipulated by defendants to deprive women of an equal opportunity for advancement in the police department. For example, in San Francisco the department, upon information and belief, refused to allow women to take exams for promotion.[7] In other defendant cities women are only permitted to take exams for promotion when vacancies open in the few command positions that have been specially designated for women.

XXXIII

Finally the structure of the police departments of the defendant cities is frequently organized to segregate women into a separate and distinct bureau. This structure forces

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[7] Catherine Milton, "Women in Policing", p. 18, Police Foundation, 1972.

women onto a truncated career ladder that diverts them from jobs as investigators, technicians, administrators, etc. As a result the police departments are never able to avail themselves to the full potential of their women officers.

CONCLUSION

XXIV

Complainants contend that an investigation will document an Anglo male ethnic and racial domination of each and every LEAA recipient's police department of such magnitude as to effectively and illegally deny to minorities and women the equal employment and promotional opportunities which are their right under the law and the Justice Department's regulations.

XXXV

Complainants further contend that conducting an investigation and granting the relief sought in paragraph XI are essential to enable the named LEAA recipients to continue receiving funding for the implementation of programs with all the necessary components to effectively reduce crime and deliquency in California cities.

THEREFORE IT IS RESPECTFULLY PRAYED THAT THE AFOREMENTIONED RELIEF, PARAGRAPH XI, BE INSTITUTED AS EXPEDITIOUSLY AS POSSIBLE AND THAT THE COMPLAINANTS BE FORMALLY APPRISED OF THE PROCEEDINGS AT THIRTY DAY INTERVALS.

DATED: April 10, 1973

Respectfully submitted on behalf of the

AMERICAN G.I. FORUM; BLACK WOMEN ORGANIZED FOR ACTION; LEAGUE OF UNITED LATIN-AMERICAN CITIZENS; THE MEXICAN-AMERICAN POLITICAL ASSOCIATION; THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, (NAACP) WESTERN REGION; THE NATIONAL ORGANIZATION FOR

WOMEN (NOW); AND THE SPANISH-SPEAKING UNITY COUNCIL BY:

/s/ _____

ROBERT L. GNAIZDA
JO ANN CHANDLER
CHARLES R. LAWRENCE
ALBERT F. MORENO
Public Advocates, Inc.
433 Turk Street
San Francisco, California 94102
(415) 441-8850
Attorneys for Complainants

LOS ANGELES TIMES
March 14, 1973

28 Police, Fire Depts. Accused of Race Bias

L.A. Included Among Cities Named in Suit on Hiring Practices

BY PHILIP HAGER
Times Staff Writer

SAN FRANCISCO—Police and fire departments in 28 California cities, including Los Angeles, were accused Tuesday of discriminatory employment practices that have resulted in a "gross underrepresentation" of racial minorities.

The allegation was made in a complaint filed here before the state Fair Employment Practices Commission by four organizations representing blacks and Mexican-Americans.

Described by lawyers for the organizations as the first of its kind, the complaint cited statistics that show blacks and Spanish-named persons make up 5% of the firemen and 9% of the police in the 28 cities, while combined they make up 27% of their general populations. The complaint said the statistics were drawn from U.S. Census and municipal data.

It asks the FEPC to order the departments to initiate minority hiring programs that would produce "population parity" in 1977 and "command and supervisory parity" by 1982.

Lack Comparative Figures

In response to an inquiry, a spokesman for the Los Angeles Police Department, one of the named agencies, said the recruitment efforts in recent years had resulted in steady gains in the number of minority officers.

At present, he said, of 7,111 officers, 506 are black, 399 of Latin descent, 26 Oriental and 21 other minorities. Detailed comparative figures were not immediately available, but according to [illegible] at the time of the Watts riot in August, 1965, there were 295 black officers and fewer than nine among 5,000.

Sgt. A. L. Trailer, in charge of recruitment for the LAPD, said that a six-month minority drive by the department brought 61 new minority officers. Recently, he said, the number of minority group members undergoing training at the Police Academy had been doubled.

Trailer acknowledged that the department still encounters "some resistance" to recruiting in minority communities and competition from other prospective employers in hiring qualified blacks and Mexican-Americans. "Everybody—business, industry and other government agencies—is looking for qualified minority group members," he said.

Please Turn to Page 23, Col. 1

Bias Charged in Police, Fire Depts. Hiring

Continued from Third Page

The complaint also said that the Los Angeles Fire Department—which has already been charged with discrimination in hiring in a federal complaint—has only 49 blacks and 94 Spanish-named firemen in a force of 3,150. These two minority groups make up 28% of the city's population of 2,875,000, the complaint said.

The action was filed by officers of the western regional office of the National Assn. for the Advancement of Colored People, the League of United Latin-American Citizens, the American G.I. Forum and the Mexican American Political Assn. The complaints were [illegible] by attorneys for Public Advocates Inc., a privately financed, public interest law firm in San Francisco.

The municipal agencies were charged in the complaint with using "discriminatory and unlawful testing mechanisms which are generally nonjob related and antiability."

Exams Criticized

Such "mechanisms," it said, included "white-dominated and white-oriented" questions in oral exams.

Asked for specific examples, Robert Gnaizda, an attorney, and Tom Williamson, an investigator for Public Advocates, said recent applicants to the San Francisco fire department have been asked:

"Who was Van Gogh?" "This is not a trick: what is twice one-half of 2-and-a-half?" "Do you know a fire chief?" "What is a rubber?" (The answer: a term used in bridge.)

Questions of this nature — and others involving grammar, trigonometry and calculus—have nothing to do with the ability to be a fireman and often work to the disadvantage of minority applicants, Gnaizda said.

On certain tests, the complaint said, blacks and Mexican-Americans "... are likely to score lower because their verbal ability and personal history will reflect the disadvantages and deprivations normally associated with racial and ethnic discrimination."

8,000 Jobs Forecast

At a news conference here, Leonard Carter, director of the western office of the NAACP, said an order by the FEPC granting population parity to minorities would provide some 8,000 jobs for blacks and Mexican-Americans in police and fire departments in the 28 cities.

At present, these minorities make up 25% of the eligible applicants for fire and police jobs, he asserted.

"As the situation stands now," Carter said, "minority community residents often look upon their local police and firemen as members of a hostile, occupying army."

In addition to Los Angeles and San Francisco, fire and police departments in the following cities were named in the complaint: San Diego, San Jose, Oakland, Long Beach, Sacramento, Anaheim, Fresno, Santa Ana, Riverside, Torrance, Glendale, Huntington Beach, Garden Grove, Berkeley, Stockton, Pasadena, San Bernardino, Fremont, Sunnyvale, Hayward, Norwalk, Santa Clara, Inglewood, Pomona, Richmond and Bakersfield.

Best Copy Available

ADDITIONAL EXHIBIT

AMERICAN G.I. FORUM
132 Tropicana Drive
Oceanside, California 92054

BLACK WOMEN ORGANIZED FOR ACTION
1351 Divisadero Street
San Francisco, California 94115

LEAGUE OF UNITED LATIN-AMERICAN CITIZENS
2029 West First Street
Santa Ana, California 92703

MEXICAN-AMERICAN POLITICAL ASSOCIATION
313 North Blackstone
Fresno, California 93701

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
Western Region
995 Market Street, 16th Floor
San Francisco, California 94103

NATIONAL ORGANIZATION FOR WOMEN
Suite 1209, Milis Tower
220 Bush Street
San Francisco, California 94104

SPANISH-SPEAKING UNITY COUNCIL
1248 - 35th Avenue
Oakland, California 94601

LARSON AFFIDAVIT
EXHIBIT F
Law Offices of
Public Advocates, Inc.
14 July 1975

Mr. Herbert C. Rice, Director
Office of Civil Rights Compliance
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
United States Department of Justice
Washington, DC 20530

Re: *Civil Rights Complaint before the U.S. Department of Justice Law Enforcement Assistance Administration concerning the police departments of nineteen California cities* (filed April 12, 1973)

Dear Mr. Rice:

I am hereby formally requesting an update on the status of the nineteen cities complaint filed by this office on behalf of a coalition of minority and women's organizations in California against nineteen California police departments. Since counsel in this case was originally my former associate, Robert L. Gnaizda, it might be useful for me to update what I believe has happened so far.

Pursuant to the original filing of this complaint, you and some of your national staff members journeyed to California to meet with Mr. Gnaizda and representatives of the coalition. Subsequent thereto, L.E.A.A. communicated with all nineteen police departments, requesting information as to their employment activities. L.E.A.A. also, in 1974, instigated an on-site investigation of three of the nineteen cities: Berkeley, San Diego, and San Francisco. Following that investigation, we were informed that L.E.A.A. was concerned about the lack of police services available to the Chinese community in San Francisco. A meeting was arranged with representatives of San Francisco's ethnic communities on this topic. Correspondence on this topic circulated between the Police Department and L.E.A.A.; between L.E.A.A. and Public Advocates, as the Plaintiffs' representative; and between the Plaintiffs and L.E.A.A.

With the exception of the above discussions and corre-

spondence, we have received nor formal notification from L.E.A.A. as to the progress of the investigation in the other subject cities—San Diego and Berkeley; we have received no notification of planned or pending action by L.E.A.A. on this complaint with regard to any or all nineteen of the Defendant cities.

If I have omitted anything material which has occurred, please so indicate in your response.

We look forward to hearing from you at your earliest convenience on the present status of this complaint, and the proposed course which future L.E.A.A. actions are going to take concerning the nineteen cities.

Very truly yours,

WILLIAM H. HASTIE, JR.

WHH:mat

LARSON AFFIDAVIT
EXHIBITS G & H

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York N.Y. 10016
(212) 725-1222

January 20, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Dear Herb:

Please consider this letter a formal request under the Freedom of Information Act for the following documents, and materials:

1. All lists, reports or other documents indicating the number of complaints, charges or letters received by LEAA, its agents or employees, alleging discrimination against an LEAA recipient or subgrantee, and/or against any governmental law enforcement agency, for each of and/or any part of the past five calendar or fiscal years.

2. All lists, reports or other documents, with reference to #1 above, indicating the respondent LEAA recipients or subgrantees and/or the respondent government law enforcement agencies.

3. All lists, reports or other documents, with reference to #1 and #2 above, indicating the disposition and/or status of all such complaints, charges or letters.

4. Any reports or other documents indicating the results of any and all civil rights compliance surveys, or other civil rights surveys, taken of LEAA recipients or subgrantees, of potential recipients or subgrantees, and/or of governmental law enforcement agencies, at any time from 1971 to and including the present date.

5. All questionnaires or other underlying documents used in reference to #4 above.

6. All reports or other documents indicating the initiation and/or status of any specific civil rights compli-

ance reviews conducted by LEAA upon any LEAA recipient or subgrantee, any potential recipient or subgrantee, and/or any governmental law enforcement agency, at any time from 1971 to and including the present date.

I would appreciate a response to this request as soon as possible. In your response, please indicate your preferred date, time and location for my inspection and copying of the aforementioned documents.

Thank you for your assistance.

Sincerely,

/s/ _____

E. RICHARD LARSON
National Staff Counsel

ERL:mm

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, N.Y. 10016
(212) 725-1222

April 28, 1975

William K. Triplett
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
Department of Justice
Washington, D.C. 20530

RE: FOIA Request

Dear Bill:

I enjoyed meeting you, Henry Tribble, and Andy Strojny last week.

As a follow-up, I'd like to confirm my understanding of our discussions about my FOIA request.

Request 1: You will provide me with a copy of the one-page summary document you showed me.

Request 2 & 3: Through Henry Tribble, you will provide me with copies of the four different sets of docket sheets which he showed me. If Henry finds any other docket sheets which are relevant to the Request, I would appreciate receiving copies of those also.

Request 4 & 5: I will visit with you and/or Winifred Dunton at some future time to review the one volume report on the responses to the 2000/1 Form survey. I'll give you a call beforehand to make sure the volume is back in your office.

Request 6: Through Andy Strojny, you will provide me with a copy of the compliance review status report being prepared by Andy for Rev. Joiners. At a subsequent time, I may request copies of the special conditions attached to grants under preaward reviews.

Thank you for your time, Bill; I look forward to receiving copies of the above documents.

Sincerely,

/s/ _____

E. RICHARD LARSON
National Staff Counsel

ERL:mm

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
WASHINGTON, D.C. 20530

May 19, 1975

Mr. E. Richard Larson
National Staff Counsel
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

Dear Richard:

This is an update on your former request for information. The material enclosed with this letter is a result of a personal discussion you had with various members of the OCRC staff near the end of April, 1975.

Enclosed with this letter are the materials you requested at that meeting, and the information resulting from the 2000/1 Form survey is presently available at our offices for your inspection, as requested.

Should you have any further questions in the interim, please feel free to contact Mr. William K. Triplett of this staff.

Sincerely,

/s/ _____

HERBERT C. RICE, DIRECTOR
Office of Civil Rights Compliance

COMPLIANCE REVIEWS
SWORN FORCE EMPLOYMENT NOW AND THEN

Department	Sworn Force March/April 1975			Sworn Force Time of Review		Reference Populations Based on 1970 Census Figures	
St. Louis Mo.P.D.	Total	2236		2230	3/72	City	City & County
	Black	379	16.9%	343	15.4%		
	SSA	N.D.		N.D.		41.4%	19.1%
	Women	35	1.6%	N.D.			
Dallas Texas Police Department	Total	1971		1816	3/72	City	SMSA
	Black	81	4.1%	40	2.2%	24.9%	15.8%
	SSA	53	2.7%	24	1.3%	7.7%	6.2%
	Women	73	3.7%	N.D.			
Cleveland, Ohio Police Department	Total	2283		2289	Fall/72	City	SMSA
	Black	201	8.8%	167	7.3%	38.3%	16.1%
	SSA	4	.2%	2	.1%		
	Women	50	2.2%	48	2.1%		
Portland, Oregon Police Department	Total	730		738	12/72	City	SMSA
	Black	8	1.1%	6	.8%	5.6%	2.3%
	SSA	4	.5%	7	.9%	1.7%	1.4%
	Women	28	3.8%	18	2.4%		
Atlanta, Georgia Police Department	Total	1551		1193	1/73	City	SMSA
	Black	390	25.1%	206	17.3%	51.3%	22.3%
	SSA	0	0	N.D.			
	Women	131	8.4%	16	1.3%		
Phoenix, Arizona Police Department	Total	1388		1258	2/73	City	SMSA
	Black	40	2.9%	37	2.9%	(age 20-34) [illegible]%	3.1%
	SSA	102	7.3%	82	6.5%	15.4%	15.7%
	Women	28	2.0%	24	1.9%		

Baltimore, Md. Police Department	Total	3348		3339	2/73		City	SMSA
	Black	459	13.7%	417	12.5%		46.4%	23.6%
	SSA	7	.2%	5	.1%		.9%	.9%
	Women	58	1.7%	37	1.1%			
New Orleans, La. Police Department	Total	1456		1325	3/73		City	SMSA
	Black	133	9.1%	99	7.5%	(ages 20-34)	44.6%	29.0%
	SSA	82	5.6%	N.D.				
	Women	19	1.3%	13	1.0%			
San Diego, Calif. Police Department	Total	1108		1044	4/73		City	SMSA
	Black	34	3.1%	28	2.7%		7.6%	4.6%
	SSA	58	5.2%	44	4.2%		12.7%	13.0%
	Oriental	8	.7%	2	.2%		2.7%	2.4%
	Women	56	5.1%	22	2.1%			
Newark, New Jersey Police Department	Total	1633		1651	5/73		City	SMSA
	Black	295	18.1%	263	15.9%		54.2%	18.8%
	SSA	35	2.1%	22	1.3%		19.1%	6.7%
	Women	7	.4%	10	.6%			
Denver, Colorado Police Department	Total	1379		1295	6/73		City	SMSA
	Black	70	5.1%	56	4.3%		9.1%	4.1%
	SSA	126	9.1%	92	7.1%		16.8%	11.3%
	Women	36	2.6%	21	1.6%			
Las Vegas, Nevada Metro. Police Dept.	Total	709		698	6/73		City	SMSA
	Black	22	3.1%	18	2.6%	(ages 20-34)	11.0%	9.3%
	SSA	8	1.1%	5	.7%		5.7%	6.2%
	Women	28	3.9%	15	1.0%			
Berkeley, Calif. Police Department	Total	188		171	7/73		City	SMSA
	Black	29	15.4%	8	4.7%		23.5%	10.6%
	SSA	8	4.3%	1	.6%		5.5%	12.0%
	Oriental	8	4.3%	1	.6%		7.1%	5.7%
	Women	8	4.3%	12	7.0%			

South Carolina Highway Patrol	Total	723		671	8/73		
	Black	29	4.0%	17	2.5%	(age 20-34)	City 25.4% SMSA Statewide
	SSA	0		N.D.			
	Women	0		0			
San Francisco, Calif. Police Department	Total	1815		1927	8/73		
	Black	82	4.5%	85	4.4%		City 13.4% SMSA 10.6%
	SSA	66	3.6%	78	4.0%		City 14.2% SMSA 12.0%
	Oriental	14	.8%	17	.9%		City 13.9% SMSA 5.7%
	Women	12	.7%	13	.7%		
Norfolk, Virginia Police Department	Total	543		532	3/74		
	Black	38	7.0%	31	5.8%		City 28.3% SMSA 24.7%
	SSA	0		0			City 1.6% SMSA 1.2%
	Women	15	2.8%	6	1.1%		
All of the Above Departments	Total	23061		22177			
	Black	2290	9.9%	1821	8.2%		
	SSA*	553	2.4%	362**	1.6%		
	Women	584	2.5%	255***	1.1%		

(*Excludes St. Louis P.D.)

(**Excludes St. Louis, New Orleans P.D. and South Carolina Highway Patrol)

(***Excludes St. Louis & Dallas P.D.)

N.D. = Not Determined
Black = Black officers
SSA = Officers of Mexican, Puerto Rican, Cuban, Latin American or Spanish descent.
Oriental = Officers of Japanese, Chinese, Korean, or Philipine descent

SMSA = Standard Metropolitan Statistical Area

Sworn Force = Self defined by Department

Henry C. Tribble, Chief
Complaints Division
Office of Civil Rights Compliance

April 8, 1975

[illegible]
[illegible] Division
[illegible] Civil Rights Compliance
[illegible] on all cases

[illegible]:

[illegible] Cases 6

[illegible]tive 2

Closed 34

Cases Received in 1972 42

1973:

Active Cases 19

Inactive 17

Closed 28

Cases Received in 1973 64

1974:

Active Cases 52

Inactive 29

[illegible] 20

[illegible] in 1974 101

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1975:

Active Cases 79

[illegible] 6

Closed 2

Cases Received in 1975 87

** Eight Cases have closed since January, 1975

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Dreda Ford
Civil Rights Commission

February 26, 1975

[illegible] C. Tribble
[illegible] of Civil Rights Compliance
Complaints Division

Information Requested

Fiscal Year 1975	71 cases	
	1 closed	
	70 open	
Fiscal Year 1974	101 cases	
	18 closed	
	83 open	
Fiscal Year 1973	64 cases	
	27 closed	
	37 open	
Fiscal Year 1972	42 cases	
	36 closed	
	6 open	

Total cases received 278

Total cases open 196

Total cases closed 82

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Henry C. Tribble, Chief
Complaint Division
Office of Civil Rights Compliance

February 13, 1975

Linda Medina
Complaint Division
Office of Civil Rights Compliance

Information requested for Civil Rights
Commission report

Fiscal Year 1975 ..... 71 cases
- 1 closed
70 open cases

Fiscal Year 1974 .....101 cases
- 18 closed
83 open cases

Fiscal Year 1973 ..... 64 cases
- 27 closed
37 open cases

Fiscal Year 1972 ..... 42 cases
- 31 closed
11 open cases

Total cases received 278

Total cases open 201

Total cases closed 77

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February 26, 1975

Ford
Editor Writer
U.S. Commission on
Civil Rights
1121 Vermont, N.W. #606
Washington, D.C. 20425

Dear Ms. Ford:

Enclosed, herewith, please find parts one, two and three of the report from the Complaints Division, Office of Civil Rights Compliance.

If further information is needed, please feel free to contact us.

Sincerely,

/s/ _____
HERBERT C. RICE, DIRECTOR
Office of Civil Rights Compliance

By:

Henry C. Tribble, Chief
Complaints Division
Office of Civil Rights Compliance

F/Y 1972-71 Cases Docketed
Discrimination Category

	No.	%
Employment	65	91.5%
Services	2	2.3%
Facilities	2	2.8%
Employment and Facilities	1	1.4%
Employment, Facilities & Services	1	1.4%

Basis of Discrimination

Race/Color	25	35.2%
National Origin	3	4.2%
Religion	1	1.4%
Sex	23	32.3%
Race and Sex	8	11.2%
Race and National Origin	6	8.4%
National Origin and Sex	3	4.2%
Race, National Origin and Sex	2	2.8%

F/Y 1974 101 Cases Docketed
Discrimination Category

Employment	92	91.0%
Services	3	3.0%
Facilities	0	0
Employment and Services	2	2.0%

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Employment and Facilities	1	.9%
Facilities and Services	3	3.0%

Basis of Discrimination

Race/Color	38	37.6%
National Origin	12	11.8%
Religion	0	0
Sex	33	32.6%
Race and Sex	10	9.9%
National Origin and Sex	5	4.9%
Race and National Origin	0	0
Race, National Orgin and Sex	3	2.9%

F.Y 1973 64 Cases Docketed
Discrimination Category

Employment	60	93.8%
Services	1	1.6%
Facilities	0	0
Facilities and Employment	2	3.1%
Services and Employment	1	1.6%

Basis of Discrimination

Race/Color	34	53.1%
National Origin	4	6.2%

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[illegible]tion	3	4.6%
Sex	18	23.1%
Race and Sex	3	4.6%
Race and National Origin	2	3.1%

/ 3.72 42 Cases Docketed
[illegible] Cases Category

Employment	39	92.9%
Services	1	2.4%
Retaliation	2	4.8%

Basis of Discrimination

Race/Color	38	90.4%
National Origin	2	4.7%
Sex	2	4.7%

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[illegible]

[illegible]

[illegible] Your Field Visit 29

[illegible] Our Field Visit 7

[illegible] Waiting for Resolution Visit 20

[illegible] Ready for Resolution Visit 8

[illegible] Monitoring Resolution 23

Other 38

Inactive

HUD Referral 6

Awaiting CIVR Action 7

Awaiting FEPC or EEOC Action 5

Awaiting CRS Action 2

Referred CIVR for Litigation 2

Monitoring Private Litigation 8

Other 36

Fiscal Year 1975 ..... 71 Cases
1 Closed
70 Open

Fiscal Year 1974 .....101 Cases
18 Closed
83 Open

Fiscal Year 1973 ..... 64 Cases
27 Closed
37 Open

Fiscal Year 1972 ..... 42 Cases
36 Closed
6 Open

Total cases received 278

Total cases open 196

Total cases closed 82

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Gail Nurrings
Office of Civil Rights Compliance

January 17, 1975

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Gail Nurrings
Office of Civil Rights Compliance

Number of cases by Discrimination Category and Basis of Discrimination

1975:

[illegible] docketed

Discrimination Category	Basis of Discrimination
[illegible]..... [illegible]	Race/Color..... [illegible]
Services..... 7	National Origin..14
Facilities.... 3	Religion..... 1
	Sex.....36

1974:

101 Cases docketed

Discrimination Category	Basis of Discrimination
Employment.....92	Race/Color..... [illegible]
Services..... 8	National Origin..22
Facilities..... 4	Religion..... 0
Other..... 3	Sex.....51

1973:

64 Cases docketed

Discrimination Category	Basis of Discrimination
Employment.....57	Race/Color..... [illegible]
Services..... 1	National Origin.. 6
Facilities..... 2	Religion..... 3
Other..... 4	Sex.....[illegible]

2

1972:

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[illegible]	
[illegible]	
[illegible]	1
[illegible]	2
[illegible]	0

Basis of discrimination	
Race/Color	[illegible]
National Origin	2
Religion	0
Sex	2

** Please note that cases may have more than 1 discrimination category and basis of discrimination

NUMERICAL BREAKDOWN

ASE #	INVEST/ATTY	ACTIVE	INACTIVE	STATE	STATUS
72-C-007	Henry Tribble		X	Ken.	awaiting FrPC or FCC action
72-C-009	Henry Tribble	X		Tenn.	preparing for resolution visit
72-C-017	Henry Tribble Dave Tevelin	X		N.Y.	preparing for field visit
72-C-019	Henry Tribble	X		Miss.	monitoring
72-C-020	Dave Tevelin	Closed		Ala. Fla.	monitoring
72-C-022	Henry Tribble	Closed		Ala. Fla.	monitoring
72-C-027	Henry Tribble C.L. Watkins	X		N.C.	monitoring
72-C-032	Henry Tribble	X		Ala.	to be administratively closed
72-C-037	Dave Tevelin	Closed		Ala.	Closed
72-C-041	Ron Branch	X		Texas	monitoring
73-C-002	Henry Tribble	X		S.C.	preparing for resolution visit
73-C-003	Henry Tribble	X		Calif.	monitoring
73-C-004	Ron Branch	X		Wisc.	preparing for resolution visit
73-C-005	C.L. Watkins	Closed		Fla.	Closed
73-C-008	Henry Tribble	X		Mo.	monitoring
73-C-011	C. Jones	Closed		Miss.	Closed
73-C-012	Ernie Fuentes			Va.	monitoring
73-C-015	Ron Branch	X		Wash.	monitoring
73-C-017	Ernie Fuentes	X		Calif.	ready for resolution visit
73-C-020	C. Jones	X		Grenada Miss.	evaluate materials
73-C-021	C. Jones	X		Grenada Miss	evaluate materials
73-C-022	C. Jones	Closed		Va.	write letters
73-C-023	C. Jones	Closed		Va.	write letters
73-C-024	C. Jones	X		Fla.	request monitoring report
73-C-025	Henry Tribble		X	Hawaii	referred CIVR for litigation
73-C-026	Henry Tribble		X	Hawaii	referred CIVR for litigation
73-C-027	C.L. Watkins		X	La.	monitoring private litigation
73-C-028	Henry Tribble		X	La.	monitoring private litigation
73-C-029	Ron Branch	X		La.	monitoring
73-C-031	Ron Branch	X		Texas	monitoring
73-C-032	Henry Tribble		X	Ind.	
73-C-034	Ron Branch	X		Texas	monitoring
	Henry Tribble				monitoring p.v.

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NUMERICAL BREAKDOWN

CASE #	INVEST/ATTY	ACTIVE	INACTIVE	STATE	STATUS
73-C-039	DT	X		N.Y.	Preparing Resl. Visit
73-C-042	DT	X		N.Y.	"
73-C-044	RB		X	N.C.	Awaiting CIVR Action
73-C-046	HCT		X	Ill.	Monitoring agreement w/EEOC & OCRC
73-C-049	HCT		X	Ca.	Referred to OCRC Review Division
73-C-050	HCT		X	Penn.	To be reviewed re: jurisdiction
73-C-051	HCT	X		La.	Awaiting Response to Resl. letter
73-C-054	HCT		X	Miss.	HEW Referral
73-C-055	CJ	X		Md.	Review of Data
73-C-056	HCT		X	Ill.	HEW Referred
73-C-057	CJ	X		Ky.	Preparing for Field V
73-C-058	CJ	X		Ky.	"
73-C-060	RB		X	Ca.	Monitoring Priv. Liti
73-C-061	HCT		X	MD.	Awaiting CIVR Action
73-C-062	RD	X		Fla.	Monitoring
74-C-001	DT	CLOSED	CLOSED	Penn.	CLOSED
74-C-002	RB		X	Ga.	
74-C-008	RB		X	Ga.	
74-C-009	RD	X		Ill.	Preparing Resl. Visit
74-C-010	RB	X		Ga.	Monitoring
74-C-011	RB	X		Ga.	"
74-C-012	RB	X		Ga.	"
74-C-013	RB	X		Mass.	"
74-C-014	HCT	X		Fla.	Preparing Rsl. Visit
74-C-015	HCT/CW	X		Fla.	Preparing Rsl. Visit
74-C-018	HCT		X	Missouri	HEW Referral
74-C-019	RB	CLOSED	CLOSED	Ca.	CLOSED
74-C-020	EF	X		Va.	Preparing Field Visit
74-C-021	EF	X		Tx.	"
74-C-022	CW	CLOSED	CLOSED	Fla.	CLOSED
74-C-025	EF		X	Ca.	Closing, No Juris.
74-C-026	DT		X	D.C.	Hired; Closed

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NUMERICAL BREAKDOWN

CASE #	INVEST/ATTY	ACTIVE	INACTIVE	STATE	STATUS
74-C-029	EF	X		Fla.	Monitoring
74-C-030	DT	X		Wash.	Preparing Field Visi
74-C-031	HCT		X	Ca.	Monitoring Prv. Liti
74-C-033	HCT		X	Ca.	"
74-C-035	DT	X		N.Y.	Preparing Field Visi
74-C-037	HCT	X		Ga.	Ready for Field Visi
74-C-038	HCT	X		Ga.	"
74-C-040	RD	X		Md.	Preparing Resl. Visi
74-C-044	HCT	X		Tx.	Monitoring
74-C-045	HCT	X		Tx.	Preparing Resl. Visi
74-C-046	CJ	X		Va.	Review of Data
74-C-048	HCT		X	N.J.	Awaiting CIVR Action
74-C-049	HCT	X		Missouri	Ready for Field Visi
74-C-050	HCT	X		Missouri	"
74-C-052	EF	X		Tx.	Preparing for Field V
74-C-053	HCT	X		Tenn.	Preparing RESL. Visi
74-C-054	RB		X	N.Y.	Need additional information
74-C-055	EF	X		Az.	Monitoring
74-C-005	EF	X		Ks.	"
74-C-056	HCT		X	Ill.	HEW Referral
74-C-057	HCT	X		Fla.	Ready for Field Visi
74-C-058	EF		X	Tx.	Awaiting CIVR Action
74-C-059	EF	X		Tx.	Preparing Field Visi
74-C-060	HCT		X	Ill.	Referred to CIVR for Litigation
74-C-062	EF	X		Ca.	Monitoring
74-C-063	EF		X	Ks.	K.C. Monitoring
74-C-064	EF		X	Ks.	"
74-C-065	HCT		X	Wisc.	HEW Referral
74-C-066	HCT		X	La.	Monitoring Priv. Lit
74-C-068	CW		X	Tx.	being Cloned

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NUMERICAL BREAKDOWN

CASE #	INVEST/ATTY	ACTIVE	INACTIVE	STATE	STATUS
74-C-069	HCT	X		Ga.	Ready for Field Visi
74-C-071	HCT		X	Ill.	HEW Referral
74-C-072	EF	X		Ca.	Preparing for Resl.V
74-C-073	HCT	X		Fla.	Ready for Field Visi
74-C-074	DT	X		Ala.	Monitoring
74-C-075	DT	X		Ala.	"
74-C-076	RB	X		Conn.	Monitoring
74-C-077	RB	X		Va.	Preparing Resol. Vis
74-C-078	HCT	X		Fla.	Ready for Field Visi
74-C-079	HCT	X		Fla.	"
74-C-080	EF		X	Ks.	K.C. Monitor Report
74-C-082	RD	X		Fla.	Preparing for Field Vis
74-C-083	RD	X		Fla.	"
74-C-084	HCT	X		Wisc.	Ready for Field Visi
74-C-085	RD	X		Ca.	Needs Additional Inf
74-C-086	HCT		X	Ill.	HEW Referral
74-C-088	EF	X		Nev.	Monitoring
74-C-089	HCT		X	Conn.	Awaiting FEPC/EEOC A
74-C-090	CW	X		Mass.	Corresponding
74-C-091	EF	X		Ca.	Ready for Resol. Vis
74-C-093	HCT	X		Maine	Ready for Field Visi
74-C-094	HCT		X	Tx.	Awaiting CIVR Action
74-C-095	HCT		X	Tx.	"
74-C-096	DT	X		Wash.	Preparing Field Visi
74-C-097	DT	X		Wash.	"
74-C-099	HCT	X		Neb.	Ready for Field Visi
74-C-101	HCT	X		Wisc.	"
75-C-001	EF	X		Nev.	Monitoring
75-C-002	HCT	X		Conn.	Ready for Field Visi
75-C-003	DT	X		S.C.	Preparing for Field
75-C-004	RD	X		Fla.	Unsubstantial Investigation
75-C-005	EF	X		Nev.	Monitoring
75-C-006	RB	X		Va.	Monitoring

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NUMERICAL BREAKDOWN

CASE #	INVEST/ATTY	ACTIVE	INACTIVE	STATE	STATUS
75-C-008	HCT		X	S.C.	HEW Referral
75-C-009	CW	X		Ca.	Corresponding
75-C-010	CW	X		Fla.	Requesting Info/Resp
75-C-011	CW	X		Conn.	Waiting for response
75-C-012	RB	X		Ia.	Monitoring
75-C-013	DT		X	N.Y.	Awaiting FEPC or EEOC Action
75-C-014	DT	X		Mich.	Preparing Field Visit
75-C-015	RB	X		Ia.	Monitoring
75-C-16	DT	CLOSED	CLOSED	Ill.	CLOSED
75-C-017	EF	X		Ca.	Ready for Resolution Visit
75-C-018	HCT		X	Wisc.	HEW Referral
75-C-019	HCT	X		Ca.	Ready for Resol. Vis
75-C-020				N.J.	
75-C-021	EF	X		Fla.	Preparing Field Visi
75-C-022	DT		X	Wisc.	Awaiting FEPC or EEOC Action
75-C-023	DT	CLOSED	CLOSED	Ca.	CLOSED
75-C-024	HCT		X	Ill.	Awaiting FEPC or EEOC Action
75-C-025	EF		X	Wisc.	Awaiting CIVR Action
75-C-026				Ca.	
75-C-027	CW		X	Ca.	Waiting for response
75-C-028				Ca.	
75-C-029	CJ	X		La.	Preparing for Resolution Visit
75-C-030				Wisc.	
75-C-031	HCT	X		Wash.	Preparing for Field Visit
75-C-032	CW	X		Wisc.	Corresponding
75-C-033	RB		X	Wisc.	Awaiting FEPC or EEOC Action
75-C-034	HCT	X		Minn.	Monitoring
75-C-035	CJ	X		Ca.	Corresponding
75-C-036	DT	X		Neb.	Preparing Field Visit
75-C-037				Ill.	
75-C-038					
75-C-039					

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NUMERICAL BREAKDOWN

CASE #	INVEST/ATTY	ACTIVE	INACTIVE	STATE	STATUS
75-C-041	CW	X		Ind.	Corresponding
75-C-042	N.A.			Ca.	
75-C-043	CW	X		Ia.	Corresponding
75-C-044	N.A.			La.	
75-C-045	N.A.			D.C.	
75-C-046	DT	X		Neb.	Preparing Field Visi
75-C-047	N.A.			Ia.	
75-C-048	N.A.			Colo.	
75-C-049	N.A.			Wash.	
75-C-050	N.A.			Wash.	

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, N.Y. 10016
(212) 725-1222

August 7, 1975

Mr. Richard Velde, Administrator
Law Enforcement Assistance Admin.
United States Department of Justice
Washington, D.C. 20530

Re: FOIA Request

Dear Mr. Velde:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, I hereby request an enumeration of all (A) LEAA discretionary funding, and (B) LEAA block funding for fiscal years (1) 1972, (2) 1973, (3) 1974, (4) 1975, and (5) 1976, which has been made to the following law enforcement agencies as LEAA recipients or subgrantees:

(a) All state police departments.

(b) Atlanta [Georgia] Police Department.

(c) Ames [Iowa] Police Department.

(d) Bridgeport [Connecticut] Police Department.

(e) Cleveland [Ohio] Police Department.

(f) Des Moines [Iowa] Police Department.

(g) Detroit [Michigan] Police Department.

(h) Honoluly [Hawaii] Police Department.

(i) Las Vegas [Nevada] Police Department.

(j) New Orleans [Louisiana] Police Department.

(k) New York [New York] Police Department.

(l) Newton [Iowa] Police Department.

(m) Oakland [California] Police Department.

(n) Philadelphia [Pennsylvania] Police Department.

(o) Portland [Oregon] Police Department.

(p) Richmond [California] Police Department.

(q) St. Louis [Missouri] Police Department.

(r) Wayne County [Michigan] Police Department.

You may bill me at this office for the cost of reproducing materials containing the above information.

Thank you for your assistance.

Sincerely,

/s/_____

E. RICHARD LARSON
National Staff Counsel

ERL:mm

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
WASHINGTON, D.C. 20531

August 21, 1975

E. Richard Larson
American Civil Liberties Union
22 East 40th Street
New York, New York 10016

Dear Mr. Larson:

Enclosed you will find the information you requested from the LEAA Grants Management Information System (GMIS). I hope you will find this information both useful and informative.

The information you are receiving is the most current information from the GMIS data base. However, the data is in a constant process of update, and as of the present time all awards of FY 74 funds have not been entered into the data base. Since some states have been updated and others have not, it is impossible to say that the information is accurate as of a certain date. If you have any questions, please contact Suzanne Grundstrom, of the Information Retrieval Staff, at 202/376-3886.

Sincerely,

/s/_____

DELPHINE F. DAY
Systems Analyst
Information Retrieval Staff

Enclosure

P.S. The cost of this information is $137.72; you will be sent a bill at a later date.

Office-Supreme Court, U.S.
FILED
JUL 23 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1074

In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, ET AL., PETITIONERS,

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

Volume II

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SUMMARY OF AWARDS BY FUND TYPE AND CRIMINAL JUSTICE COMPONENTS
(in thousands of dollars as of 7/31/75)

	Police		Courts		Corrections		Total Police Courts, Corrections	Obligation Authority	% Obligation Authority Represented
1969									
Block	18,285	79%	1,881	8%	2,932	13%	23,038		
Non Block	4,490	66%	496	7%	1,844	27%	6,830		
Total	22,775	76%	2,377	8%	4,776	16%	29,028	60,000	50%
1970									
Block	110,972	63%	14,473	8%	50,039	29%	175,484		
Non Block	24,599	62%	4,505	11%	10,718	27%	39,822		
Total	135,571	63%	18,978	9%	60,757	28%	215,306	267,937	80%
1971									
Block	177,203	50%	40,248	11%	135,051	39%	353,302		
Non Block	35,618	34%	10,148	10%	59,193	56%	104,959		
Total	212,821	46%	50,396	11%	195,044	43%	458,261	528,954	87%
1972									
Block	201,051	46%	72,528	17%	159,488	37%	433,067		
Non Block	64,282	42%	22,901	15%	64,601	43%	151,784		
Total	266,133	46%	95,429	16%	224,089	38%	585,651	698,723	84%
1973									
Block	216,455	47%	72,731	16%	170,708	37%	459,894		
Non Block	69,943	38%	33,186	18%	80,740	44%	183,869		
Total	286,398	44%	105,917	17%	251,448	39%	643,763	841,166	77%
1974									
Block	163,319	44%	76,151	20%	134,617	36%	374,087		
Non Block	54,592	32%	21,796	13%	94,086	55%	170,474		
Total	217,911	40%	97,947	18%	228,703	42%	544,561	870,526	62%
1975									
Block	33,330	40%	15,615	19%	26,611	33%	81,556		
Non Block	59,174	34%	36,139	21%	77,758	45%	173,071		
Total	98,504	39%	51,754	20%	104,369	41%	254,627	862,171	30%
Total									
Block	927,615	49%	293,627	15%	680,246	36%	1,901,288		
Non Block	312,698	38%	129,171	15%	383,940	47%	830,809		
Total	1,240,113	45%	422,798	16%	1,069,186	39%	2,732,097	4,129,477	[illegible]

TITLE:
KNOWN OFFENDER FILE

AWARD AMOUNT:
$124,395

FUNDING HISTORY:
0 71 DF $124,395

GRANTEE NAME AND ADDRESS:
OAKLAND POLICE DEPT.
455 SEVENTH STREET
OAKLAND CA 94607

GRANT NO.:
710F091067

PROJECT DIRECTOR:
GEORGE HART & RAYMOND BROWN, DEP. CHIEFS

PROJECT SUMMARY:
THE OAKLAND KNOWN OFFENDER FILE WILL BE COMPUTERIZED. IT WILL PROVIDE INVESTIGATIVE LEADS, THEREBY CREATING AN INCREASE IN CRIME CLEARANCE RATES. THERE WILL BE AN INTERFACE BETWEEN THE COMPUTER AND A HIGH SPEED MICROFILM RETRIEVAL SYSTEM CONTAINING PHOTOGRAPHS AND FINGERPRINTS. THE DATA RETRIEVAL PROGRAM WILL BE DESIGNED FOR MAXIMUM PRACTICAL FLEXIBILITY SO THAT ANY COMBINATION OF FILE ELEMENTS MAY BE EMPLOYED AS SEARCH PARAMETERS. THE SYSTEM WILL HAVE REGIONAL USE AND BE AVAILABLE AS A SERVICE TO LAW ENFORCEMENT AGENCIES IN THE OAKLAND METROPOLITAN AREA. THIS PROPOSAL, IN THE AMOUNT OF $124,395 FITS WITHIN THE SCOPE OF PROGRAM C--IMPROVED POLICE SERVICES AND OPERATIONS (INCLUDING POLICE/COMMUNITY RELATIONS) AS DESCRIBED IN LEAA FY-71 GUIDE FOR DISCRETIONARY GRANT PROGRAMS. IT IS A LARGE CITY SPECIAL GRANT AND IS AUTHORIZED BY P.L. 90-351, AS AMENDED.

TITLE:
MINORITY RECRUITING PROGRAM FOR THE BAY AREA REGION

AWARD AMOUNT:
$30,618

FUNDING HISTORY:
0 72 DF $30,618

GRANTEE NAME AND ADDRESS:
OAKLAND POLICE DEPARTMENT
455 SEVENTH STREET
OAKLAND CA 94607

GRANT NO.:
720F090031

PROJECT DIRECTOR:
HOWARD DILSAVER,LT. OF POLICE

PROJECT SUMMARY:
THIS JOINT PROPOSAL IS FOR A REGIONAL MINORITY RECRUITMENT PROGRAM. THE OAKLAND POLICE DEPARTMENT, IN COOPERATION WITH THE SAN FRANCISCO, BERKELEY AND RICHMOND POLICE DEPARTMENTS, WILL SPONSOR THE PROJECT. RADIO, TELEVISION AND OUTDOOR MEDIA WILL BE UTILIZED FOR PUBLIC SERVICE MESSAGES. THE FILMS AND TAPES TO BE USED IN THE PROJECT WILL BE DEVELOPED BY A PROFESSIONAL ADVERTISING AGENCY WITH A RECORD OF SUCCESS IN DESIGNING MINORITY-ORIENTED AD CAMPAIGNS. ALL MEDIA ADS WILL FEATURE A TOLL-FREE TELEPHONE NUMBER. INQUIRY BY THE PROSPECTIVE APPLICANTS AND THE SUBSEQUENT FOLLOW-UP BY RECRUITERS WILL BE GREATLY SIMPLIFIED BY THIS ARRANGEMENT. FOLLOW-UP CONTACTS REGARDING POLICE EMPLOYMENT WILL BE MADE BY THE AGENCY WITH JURISIDICTION OVER THE AREA IN WHICH THE POTENTIAL RECRUIT LIVES. ACTIVE PARTICIPATION IN THE PROGRAM WILL BE LIMITED TO THE FOUR LARGEST URBAN LAW ENFORCEMENTS AGENCIES IN THE REGION; HOWEVER, SMALLER POLICE DEPARTMENT IN SATELLITE CITIES WILL RECEIVE REFERRALS WHEN THE PROSPECT LIVES WITHIN THEIR JURISDICTION.

CITY: RICHMOND

Best Copy Available

LEAA NON-BLOCK GRANTS
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

TITLE:
RICHMOND POLICE DEPT. PSYCHIATRIC AIDE

AWARD AMOUNT:
$10,000

FUNDING HISTORY:
0 70 DF $10,000

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPT.
HALL OF JUSTICE
RICHMOND CA 94804

GRANT NO.:
70DF090186

PROJECT DIRECTOR:
ROBERT A. MURPHY

PROJECT SUMMARY:
THE RICHMOD POLICE DEPARTMENT IS APPLYING FOR FUNDS TO EMPLOY DR. JEFFREY A. SCHWARTZ, A CLINICAL PSYCHOLOGIST, AS A PSYCHIATRIC AIDE TO THE DEPARTMENT UNDER THE PROVISIONS OF LEAA POLICE PROFESSIONAL AIDES CATEGORY OF THE DISCRETIONARY GRANTS PROGRAM. THE PURPOSES OF THIS PROGRAM ARE TO EXPAND AND FACILITATE THE EFFORTS OF THE RICHMOND POLICE IN THE AREAS OF COMMUNITY RELATIONS, PERSONNEL SELECTION AND BEHAVIORAL TRAINING. A SPECIAL PURPOSE OF THIS PROGRAM IS TO DEMONSTRATE AN APPROPRIATE MODEL FOR POLICE CONSULTATION. FOR THE PAST TWO YEARS DR. SCHWARTZ HAS BEEN VOLUNTEERING CONSULTING SERVICES TO THE RICHMOND POLICE. THIS MEANS THAT THE DEPARTMENT IS FAMILIAR WITH SOME OF THE USES OF A PSYCHIATRIC AIDE AND FAMILIAR WITH DR. SCHWARTZ PERSONALLY; IT ALSO MEANS THAT DR. SCHWARTZ IS FAMILIAR WITH LAW ENFORCEMENT PROCEDURES IN GENERAL AND THE MEN ON THE RICHMOND FORCE IN PARTICULAR. THESE FACTORS GIVE THIS PROGRAM AN EFFECTIVE TWO YEAR "HEADSTART" OVER BEGINNING PROGRAMS. IN ADDITION, THE DISTRUST AND SUSPICION WITH WHICH POLICE OFTEN REGARD "SHRINKS" WILL NOT DEVELOP DURING THIS PROGRAM, BECAUSE MANY MEN ON THE RICHMOND POLICE DEPARTMENT ALREADY KNOW THE CONSULTANT QUITE WELL. THE RICHMOND POLICE DEPARTMENT AND THE CITY OF RICHMOND WILL BOTH BENEFIT FROM THIS PROGRAM.

TITLE:
POLICE HELICOPTER PATROL TO REDUCE CRIME RATE-RICHMOND

AWARD AMOUNT:
$150,000

FUNDING HISTORY:
0 71 DF $150,000

GRANTEE NAME AND ADDRESS:
CALIFORNIA COUNCIL ON CRIMINAL JUSTICE
1108 - 14TH STREET
SACRAMENTO CA 95814

GRANT NO.:
71DF090491

PROJECT DIRECTOR:
ROBERT A. MURPHY

PROJECT SUMMARY:
SUMMARY DESCRIPTION OF PROJECT: THE GRANT, IN THE AMOUNT OF $150,000, IS FOR THE CITY OF RICHMOND TO ESTABLISH A POLICE HELICOPTER PATROL TO REDUCE CRIME. STATISTICS INDICATE THE CITY TO HAVE A CRIME RATE THAT IS THIRD HIGHEST IN THE NATION. THE PROJECT WILL USE TWO HELICOPTERS, TRAIN FOUR PILOTS AND TWO OBSERVERS, AND PROVIDE FULL HELICOPTER PATROL FOR A PERIOD OF TWELVE MONTHS. IT IS EXPECTED THAT THE PATROL WILL REDUCE POLICE RESPONSE TIME TO CRIMES IN PROGRESS, INCREASE THE OPPORTUNITY TO OBSERVE CRIME SCENES, INCREASE THE ABILITY TO PURSUE FLEEING SUSPECTS, IMPROVE PATROL ASSISTANCE AND SECURITY, AND PROVIDE WIDER SCOPE OF PATROL IN REMOTE AND OTHERWISE INACCESSIBLE AREAS. THIS PROJECT MEETS CRITERIA OF LARGE CITY SPECIAL GRANTS PROGRAM, DILL SPECIAL EFFORTS TO REDUCE STREET AND VIOLENT CRIME OR CONCEIVED PROGRAMS AGAINST PARTICULAR CRIMES SUCH AS BURGLARY, ROBBERY, AUTO THEFT AND OTHERS AS DESCRIBED IN LEAA FY 70 GUIDE FOR DISCRETIONARY GRANT PROGRAMS AND AS AUTHORIZED BY SECTION 306, P.L. 90-351.

Best Copy Available

TITLE:
RICHMOND POLICE HELICOPTER PATROL

AWARD AMOUNT:
$75,000

FUNDING HISTORY:
0 72 OF $75,000

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND CA 94804

GRANT NO.:
72DF099019

PROJECT DIRECTOR:
LOURN G. PHELPS

PROJECT SUMMARY:
THE CITY OF RICHMOND HAS RECEIVED A FEDERAL DISCRETIONARY GRANT IN THE AMOUNT OF $150,000 FROM LEAA TO IMPLEMENT POLICE HELICOPTER PATROL. THE FEDERAL GRANT WILL EXPIRE ON 23 AUGUST 1971, AND THIS GRANT WILL ALLOW THE CITY OF RICHMOND TO EXTEND POLICE HELICOPTER PATROL FOR A PERIOD OF ONE YEAR TO 23 AUGUST 1972. OUR GOAL IS TO SUPPLEMENT POLICE GROUND PATROL WITH POLICE AERIAL PATROL IN AN EFFORT TO PROVIDE BETTER POLICE SERVICES TO THE CITY OF RICHMOND. WE INTEND TO PROVIDE A POSITIVE CRIME DETERRENT THROUGH THE USE OF THESE MOBILE AERIAL OBSERVATION PLATFORMS. THE IMPACT OF THE RICHMOND POLICE HELICOPTER PATROL PROGRAM IS DIRECTED AT OUR ENORMOUS CRIME RATE, AND OUR EVALUATION OF THE PROGRAM WILL BE BASED ON THAT IMPACT WITH CAREFUL CONSIDERATION OF COST EFFECTIVENESS. OUR INTENTION IS TO PROVIDE 2,928 HOURS OF POLICE HELICOPTER PATROL DURING THE PERIOD OF THIS GRANT.

TITLE:
YOUTH SERVICES PROGRAM: DRUG ABUSE PROGRAM

AWARD AMOUNT:
$25,000

FUNDING HISTORY:
0 72 OF $25,000

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND CA 94804

GRANT NO.:
72DF099023

PROJECT DIRECTOR:
LOURN G. PHELPS

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT RECOGNIZED THAT THE ENORMOUS INCREASE OF DRUG-RELATED ARRESTS, ESPECIALLY IN THE RICHMOND MODEL NEIGHBORHOOD, ARE GREATLY AFFECTING THE OPERATIONS OF THE DEPARTMENT. THE DEPARTMENT HAS STUDIED THE FINDINGS OF DRUG-ABUSE EXPERTS AND HAS CONCLUDED THAT A PROGRAM COMBINING EDUCATION AND REHABILITATION IS THE BEST ANSWER TO THE DRUG PROBLEM WHICH FOCUSES UPON YOUNG PEOPLE IN THE MODEL NEIGHBORHOOD. THIS PROJECT PROPOSES THE ESTABLISHMENT OF A DRUG ABUSE SPECIALIST. HE WILL SERVE AS THE EXPERT IN HIS AREA FOR THE YSP, YOUTH SERVICES PROGRAM, CURRENTLY IN OPERATION UNDER THE CONTROL OF THE CONTRA COSTA PROBATION DEPARTMENT, IN THE MODEL NEIGHBORHOOD. HIS PRINCIPAL FUNCTIONS WILL BE EDUCATIONAL. HE WILL DEVELOP A 15-HOUR DRUG ABUSE CLASS AT CONTRA COSTA COLLEGE FOR EDUCATORS IN PARTICIPATING SCHOOLS IN THE MODEL NEIGHBORHOOD AREA. HE WILL ALSO DEVELOP AND IMPLEMENT IN-SERVICE TRAINING FOR SCHOOL COUNSELORS, WHO CURRENTLY LACK SPECIFIC EXPERTISE, YET ARE IN A KEY POSITION TO DEAL WITH AND RELATE TO DRUG USERS IN SCHOOLS. AS A RESULT, EACH MODEL NEIGHBORHOOD SCHOOL WILL HAVE AT LEAST ONE COUNSELOR WHO CAN SERVE AS A DRUG PROBLEM RESOURCE. DRUG EDUCATION IN RICHMOND AREA SCHOOLS WILL BE IMPROVED AS THE SPECIALIST WILL DEVELOP BILINGUAL CURRICULUM. ADDITIONAL TRAINING WILL BE HELD FOR REMAINING STAFF OF THE YSP WHICH WILL BE COMMUNITY ORIENTED.

Best Copy Available

LEAA SUBGRANTS, FY 72 - 76,
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

JUVENILE DELINQUENCY PREVENTION AND CONTROL PROJECT

GRANTEE NAME AND ADDRESS:
OAKLAND POLICE DEPARTMENT
POLICE ADMINISTRATION BUILDING
455 SEVENTH STREET
OAKLAND, CA 94607

AWARD AMOUNT:
$238,000

LEAA GRANT NUMBER:
73A06R0253

STATE GRANT NUMBER:
A1133-73

PROJECT SUMMARY:
THE MODEL JUVENILE DELINQUENCY PREVENTION AND CONTROL PROJECT (THRESHOLDS) IS A COMMUNITY BASED PROJECT THAT WILL PROVIDE A VIABLE ALTERNATIVE TO THE PRESENT JUVENILE JUSTICE SYSTEM. YOUTH WILL BE REFERRED TO THE PROJECT BY REPRESENTATIVES OF JUVENILE JUSTICE AGENCIES, TARGET AREA SCHOOLS, CHURCHES, DRUG PROGRAMS, RESIDENTS AND RECREATION PROGRAMS. THROUGH THE UTILIZATION OF EX-OFFENDERS AND NON EX-OFFENDERS AS STREETWORKERS, THRESHOLDS WILL PROVIDE COUNSELING, SOCIAL, CULTURAL, ECONOMIC, AND EDUCATIONAL ACTIVITIES. THE STREET WORKERS WILL DRAW UPON THEIR VAST KNOWLEDGE OF THE STREETS IN DEVELOPING POSITIVE APPROACHES TO SERVE YOUTH. IT IS OUR AIM TO PROVIDE DIRECT SERVICES TO 200 YOUTH.

CITY: RICHMOND

NEW POLICE CAREER LINES - IMPROVED POLICE COMMUNITY RELAT

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND, CA

AWARD AMOUNT:
$25,000

LEAA GRANT NUMBER:
72A06R0623

STATE GRANT NUMBER:
A727-72

PROJECT SUMMARY:
THIS PROJECT WILL ALLOW THE RICHMOND POLICE DEPARTMENT TO ESTABLISH, ON AN EXPERIMENTAL BASIS, A JOB POSITION ENTITLED COMMUNITY SERVICE OFFICER. THIS PROJECT WILL ACCOMPLISH THREE MAJOR OBJECTIVES: 1. COMMUNITY SERVICE OFFICERS (CSOS) WILL PROVIDE NEW TYPES OF COMMUNITY SERVICES. 2. COMMUNITY SERVICE OFFICERS WILL BE A SOURCE OF PRETRAINED MINORITY RECRUITS. 3. COMMUNITY SERVICE OFFICERS WILL RELIEVE SWORN OFFICERS OF SOME MINOR PATROL DUTIES SO THAT THEY WILL HAVE MORE TIME TO COMBAT SERIOUS CRIMES. THIS PROPOSAL DETAILS THE THIRD YEAR OF THIS PROJECT.

Best Copy Available

Best Copy Available

LEAA SUBGRANTS, FY 72 - 76,
TO CITY LEVEL ENFORCEMENT AGENCIES, SPECIFIC CITIES

RICHMOND POLICE DEPARTMENT PSYCHIATRIC AIDE

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND, CA

AWARD AMOUNT: $7,000
LEAA GRANT NUMBER: 72A06R0657
STATE GRANT NUMBER: A810-72

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT PROPOSES TO CONTINUE ITS ONGOING PSYCHIATRIC AIDE PROGRAM FOR A THIRD YEAR. THE GENERAL OBJECTIVES OF THE PSYCHIATRIC AIDE DURING THIS THIRD YEAR WILL BE THE IMPLEMENTATION OF RECOMMENDATIONS ARISING FROM THE RICHMOND POLICE DEPARTMENT TRAINING AND EDUCATION SURVEY; THE CONTINUATION OF THE DEPARTMENT'S MINORITY RECRUITMENT COMMITTEE; THE COMPLETION OF AN EVALUATION OF THE DEPARTMENT'S SELECTION PROCEDURES WHICH IS CURRENTLY IN PROGRESS; THE CONTINUATION OF ADMINISTRATIVE CONSULTATION TO THE CHIEF OF POLICE; THE PSYCHIATRIC AIDE WILL ALSO MAINTAIN A PRIMARY ROLE IN PROGRAM PLANNING.

RICHMOND POLICE DEPT CRIME SPECIFIC: BURGLARY PROJECT

GRANTEE NAME AND ADDRESS:
CITY OF RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
RICHMOND, CA

AWARD AMOUNT: $176,000
LEAA GRANT NUMBER: 72A06R1314
STATE GRANT NUMBER: A947-72

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT PROPOSES TO APPLY FOR FUNDS FROM THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION VIA THE CALIFORNIA COUNCIL ON CRIMINAL JUSTICE FOR THE IMPLEMENTATION OF A CRIME SPECIFIC: BURGLARY PROGRAM. THIS PROGRAM, FOCUSING UPON THE REDUCTION OF RESIDENTIAL AND COMMERCIAL BURGLARIES WITHIN THE TOTAL CITY, WILL ENCOMPASS THE FOLLOWING BASIC AREAS: PUBLIC EDUCATION AND AWARENESS, IMPROVED SECURITY METHODS, IMPROVED INVESTIGATIONAL METHODOLOGY, IMPROVED SURVEILLANCE TECHNIQUES, AND DECREASING THE STOLEN MERCHANDISE RECEIVER MARKET.

RICHMOND POLICE DEPARTMENT INFORMATION AND COMMUNICATION CENTER

GRANTEE NAME AND ADDRESS:
RICHMOND POLICE DEPARTMENT
HALL OF JUSTICE
27TH AND MACDONALD AVE
RICHMOND, CA 94804

AWARD AMOUNT: $45,000
LEAA GRANT NUMBER: 73A06R0108
STATE GRANT NUMBER: A1381-73

PROJECT SUMMARY:
THE RICHMOND POLICE DEPARTMENT PROPOSES TO APPLY FOR FUNDS FROM THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION VIA THE CALIFORNIA COUNCIL ON CRIMINAL JUSTICE, TO REPLACE ITS CURRENT DYSFUNCTIONAL COMMUNICATIONS AND INFORMATION SYSTEM. THE PROPOSED SYSTEM WILL PROVIDE FOR SEPARATE POLICE AND FIRE DISPATCH FUNCTIONS AND MAKE AVAILABLE A SECOND CHANNEL FOR AUXILIARY SERVICE REQUESTS. THE SECOND CHANNEL WILL ALSO BE AVAILABLE FOR AREA-WIDE WEST CONTRA COSTA COUNTY COLLABORATIVE USAGE.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Pennsylvania)
) ss.
County of Philadelphia)

PENELOPE BRACE, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-styled case.

2. I am a female citizen of the United States and a resident of Philadelphia, Pennsylvania.

3. I have been employed as a police officer (designated as a "policewoman") with the Philadelphia Police Department since 1965.

4. The Philadelphia Police Department, as of November 1974, employed 8,245 sworn police officers, of whom only 74 (or .9%) were female.

5. Of nineteen job classifications for sworn officers in the Philadelphia Police Department, only four classifications, authorizing the employment of 86 females, are open to females: policewoman captain (1), policewoman lieutenant (2), policewoman sergeant (4), policewoman (79). The remaining fifteen sworn job classifications, authorizing the

employment of 8,276 males, are open only to males. Thus only 1.03% of the sworn officers may be female.

6. All of the female officers are permanently assigned to the Juvenile Aid Division, although some of them are temporarily assigned to other divisions or units such as the Community Relations Division or the Civil Affairs Unit. No female sworn officer, regardless of rank, is permitted to supervise any male sworn officer on a permanent basis, whether within or without the Juvenile Aid Division.

7. The Philadelphia Police Department has no program for recruiting female applicants. No female sworn officer has ever been permanently assigned to the Personnel Department for recruitment purposes. Advertising programs conducted on behalf of the Department are designed to attract male applicants.

8. Since the beginning of my employment in 1965, I have continuously received "superior" and "outstanding" performance evaluations. Most recently, on June 6, 1973, I received a "superior" evaluation. Prior to July 18, 1973, I had never received any reprimand or been charged with any misconduct in connection with the performance of my duties as a "policewoman."

9. On July 18, 1973, I filed a sex discrimination charge with the EEOC against the Philadelphia Police Department.

10. On July 20, 1973, I mailed a similar charge of employment discrimination based upon sex to LEAA. In that charge I requested "LEAA [to] consider holding up funding for the Police Department in Philadelphia, until such time as my complaint is resolved."

11. Five days later, on July 25, 1973, I was reassigned from the Juvenile Aid Division to the West Division, the division which is located farther from my home than any other division.

12. From approximately August 30, 1973, through approximately October 3, 1973, I was placed under surveillance by the Internal Security Division of the Philadelphia Police Department, a division under the direct supervision of Police Commissioner Joseph O'Neill.

13. By letter dated October 2, 1973, I was informed that I was to report for a "special psychiatric examination."

14. On November 7, 1973, I submitted an application for the positions of police corporal and detective. By letter dated December 24, 1973, from the Personnel Department of the Philadelphia Police Department, I was advised that I did not meet the requirements for the positions of police corporal or detective because I was not employed as a "policeman."

15. On November 26, 1973, the Philadelphia Police Department filed a statement of charges initiating dismissal procedures against me. On January 9, 1974, a hearing on the charges filed against me was held by the Department's Board of Inquiry.

16. On February 12, 1974, I filed a complaint in the United States District Court alleging unlawful sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and of 42 U.S.C. § 1983 against the City of Philadelphia and its officials, *Brace* v. *O'Neill*, No. 74–339 (E.D. Pa., filed Feb. 12, 1974).

17. Three days later, on February 15, 1974, I was fired from my employment by the Philadelphia Police Department.

18. On appeal to the Civil Service Commission of the City of Philadelphia, I was reinstated on May 17, 1974. I continue to be employed as and currently am a police officer with the Philadelphia Police Department.

19. In response to my July 20, 1973 letter to LEAA, I received a letter dated August 7, 1973 from Herbert C. Rice stating that an "investigator" would be assigned to my complaint.

20. On August 9, 1973, I spoke by phone with Mr. Mahoney, an investigator for LEAA. Mr. Mahoney stated that LEAA would not suspend funding to the Philadelphia Police Department.

21. Shortly thereafter, during August, 1973, I wrote a letter to Mr. Henry Tribble, then Chief Investigator for LEAA, enclosing an article wherein Philadelphia Mayor

Frank Rizzo was quoted as opposing equal employment for female sworn officers in the Philadelphia Police Department. In my letter to Mr. Tribble, I wrote that I was "eager to talk to your investigators."

22. On September 28, 1973, I spoke by phone with Philip Bowen, an investigator for LEAA. Mr. Bowen indicated that he was monitoring my charge and that he would meet with me personally as soon as he obtained any information from the Philadelphia Police Department.

23. On or about October 24, 1973, I met personally with Mr. Bowen and Mr. Tribble, representatives of LEAA, whereupon we discussed my sex discrimination complaint against the Philadelphia Police Department.

24. On November 8, 1973, I visited the office of my congressman, Representative William J. Green. On November 30, 1973, Representative Green wrote to Herbert C. Rice encouraging action by LEAA's Office of Civil Rights Compliance. In response to his letter, Representative Green received a letter dated December 28, 1973 from Donald Santarelli, then Administrator of LEAA and the predecessor in office of Richard W. Velde, stating that the LEAA's "Office of Civil Rights Compliance has begun an investigation of Ms. Brace's complaint" and that "discussions are being held with Philadelphia officials with the goal of expeditious resolution of this matter."

25. Meanwile, on November 28, 1973, I informed Mr. Bowen of LEAA that formal charges had been filed against me by the Philadelphia Police Department. On December 5, 1973, Mr. Bowen advised me that the Department's charges were being dropped. On December 6, 1973, Mr. Bowen similarly advised my lawyer, Steven Waxman, that the charges were being dropped. On January 4, 1974, I informed Mr. Bowen that the charges had not been dropped and that the hearing was scheduled for January 9, 1974.

26. By letter dated February 4, 1974, from Herbert C. Rice, I was informed that the City of Philadelphia had failed to undertake "voluntary compliance with the civil rights laws and regulations affecting the Philadelphia Police Department as a recipient of funds from the Law Enforce-

ment Assistance Administration." [A copy of the letter is attached hereto as Exhibit A].

27. Thereafter, on February 19, 1974, a week after I had filed my own lawsuit, the Department of Justice also filed a complaint in the United States District Court for the Eastern Division of Pennsylvania alleging unlawful sex discrimination in violation of Title VII of the Civil Rights Act of 1964 against the City of Philadelphia and its officials, *United States* v. *City of Philadelphia*, No. 74–400 (E.D. Pa., filed Feb. 19, 1974).

28. On or about September 25, 1974, the Philadelphia Police Department announced that it intended to establish a "Pilot Project" whereby it would temporarily employ twenty-two females as police officers with the same duties and responsibilities of the more than 6,000 "policemen" then assigned to patrol sector work. Although more than 2,500 female applicants responded to the announcement, the Department did not implement the program.

29. The consolidated trials of *Brace* v. *O'Neill*, *supra*, and *United States* v. *City of Philadelphia*, *supra*, were scheduled to commence on January 27, 1975. Several weeks earlier, in the first week of January, I believe that LEAA awarded two $1,000,000 discretionary grants to the Philadelphia Police Department.

30. In the meantime, the consolidated federal court trials were delayed several days beyond January 27, 1975, while the United States Department of Justice, without my participation, discussed settlement with the City of Philadelphia.

31. On January 29, 1975, the United States Department of Justice entered into an agreement with the City of Philadelphia whereby the Police Department would hire an "experimental" recruit class, 50% of whom would be women who would be assigned to patrol sector work and whose work performance would be compared with that of the men as an "aid to the court." The agreement negotiated by the United States Department of Justice made no reference to the issues of promotion and back pay raised by me in my lawsuit. Although I refused to sign the agreement, the

Court granted a continuance of at least six months in both cases, pending the outcome of the "experimental" recruit class.

32. The "experimental" recruit class agreed to by the United States Department of Justice has yet to be implemented by the Philadelphia Police Department. I believe that the Police Department, however, has received approval in the past few weeks to receive another $1,000,000 in LEAA funding.

33. I believe that Philadelphia Police Department has received in excess of $8,000,000 in LEAA funding. LEAA has terminated LEAA funding to the Philadelphia Police Department for civil rights non-compliance.

/s/ _____
PENELOPE BRACE

Sworn to before me this day of September, 1975.

/s/_____
ERNEST J. GALLO
Notary Public

BRACE AFFIDAVIT
EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
Washington, D.C. 20530

February 4, 1974

Mrs. Penelope Brace
5004 F Street
Philadelphia, Pennsylvania 19124

Re: 74-C-007

Dear Ms. Brace:

This letter is in regard to your complaint of sex discrimination against the Philadelphia Police Department and your subsequent complaint of retaliation and harassment.

Discussion and correspondence with officials of the City of Philadelphia have not resulted in a commitment by these officials to undertake significant steps to achieve what this agency believes to be voluntary compliance with the civil rights laws and regulations affecting the Philadelphia Police Department as a recipient of funds from the Law Enforcement Assistance Administration.

Accordingly, this letter is to advise you that LEAA has referred this matter to the Civil Rights Division of the Department of Justice for such action as it deems appropriate.

Sincerely,

/s/ _____
HERBERT C. RICE,
Director
Office of Civil Rights Compliance

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of California)
) ss.
County of Contra Costa)

OLLIE S. GLOVER, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Richmond, California.

3. I have been discriminated against by the Richmond Police Department.

4. The Richmond Police Department employs approximately 178 sworn police officers, of whom only 24 (or approximately 11.3%) are black. According to the 1970 census, the population of the City of Richmond was 36.2% black. Upon information and belief, the current population of the City of Richmond is 40% black.

5. All but three of the black officers hold the entry-level rank of patrolman. Of those black officers above the rank of patrolman, all three are sergeants (of a total of twenty-six sergeants). There are no black captains or lieutenants. It

was not until 1967 that any black officer was promoted above the rank of patrolman.

6. Until 1960, there were only two black police officers in the Richmond Police Department. These two officers were assigned duties on a racial basis, were assigned to the most undesirable shifts, and were denied membership in the Police Officers Association.

7. Applicants for entry-level employment as a patrolman are required to pass a written test, among other requirements. In November, 1974, the most recent occasion on which the test was obtained, 79% of the white applicants passed the test while only 30% of the black applicants passed. The written test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrolman.

8. Other entry-level selection criteria include a 5'7" minimum height requirement, the consideration of arrest records, and a background investigation. On information and belief, each of these criteria has had a discriminatory impact (either race or sex), and none has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of police officer.

9. Police officers who seek promotion to the rank of sergeant must have four years experience as a patrolman (or three years experience if the officer holds a graduate degree), and must rank among the top twelve in an examination consisting of a written test (weighted 10%), and a subjectively administered evaluation (weighted 90%). In the most recent examination, administered in January and February 1974, all three black applicants were eliminated. None of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of sergeant.

10. Police officers who seek promotion to the rank of lieutenant must have attained permanent status as a sergeant, and must pass an examination consisting solely of a subjectively administered evaluation. In the most recent examination, administered in September 1974, all three eli-

gible black applicants were eliminated. Neither of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of lieutenant.

11. I am a ten-year veteran of the Richmond Police Department currently holding the rank of sergeant. I have applied for but been denied promotion to the rank of lieutenant. In September, 1974, I was rejected for failing to rank high enough on the subjectively administered evaluation, thereby also barring me from reapplying for promotion for at least two years.

12. On March 5, 1975, various black officers, the Guardians of Justice and I filed a class action complaint in the United States District Court for the Northern District of California alleging unlawful racial discrimination in violation of 42 U.S.C. Sec. 1981 and Sec. 1983 against the City of Richmond and vairous of its officials, The *Guardians of Justice* v. *Richmond*, C-75-0439-SW (N.D. Cal., filed March 5, 1975). That case is currently in discovery, and no date has been set for a trial on the merits.

13. In July, 1975, I mailed a charge of discrimination, enclosing a copy of the *Guardians* complaint, to LEAA. [A copy of that charge is attached hereto as Exhibit A.]

14. In August, 1975, I received a reply letter from Herbert C. Rice acknowledging the pendency of *Guardians* in the federal court and stating that LEAA would "defer assertion of jurisdiction over similar subject matter until there has been a judicial resolution of that matter." [A copy of that letter is attached hereto as Exhibit B.]

15. The LEAA charge which I filed is not the only charge filed with LEAA against the Richmond Police Department. In April, 1973, an eighteen-page administrative complaint was filed with LEAA against Richmond and eighteen other California cities. That complaint, which was filed by a coalition of seven civil rights organizations, detailed the aforementioned discriminatory employment practices of the Richmond Police Department, noted that Richmond had received $272,894 in LEAA funding in 1971 and 1972, and sought the "termination or suspension" of LEAA funding.

16. I believe that LEAA, in response to the coalition's LEAA complaint, requested information from the Richmond Police Department about its employment practices, but declined to conduct an on-site investigation into those practices.

17. I believe that LEAA has undertaken no full investigation of the Richmond Police Department's employment practices in response to the coalition's complaint or to my charge. I believe that LEAA has classified the aforementioned LEAA charges as inactive because of the pendency of *Guardians of Justice* v. *Richmond, supra.*

18. I believe that the Richmond Police Department has received approximately $500,000 in LEAA funding. LEAA has never suspended the LEAA funding of the Richmond Police Department because of civil rights non-compliance.

OLLIE S. GLOVER

Sworn to before me this day of October, 1975.

Notary Public

GLOVER AFFIDAVIT
EXHIBIT A

Sgt. Ollie S. Glover
4846 State Court
Richmond, California 94804

July 8, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

RE: LEAA Administrative Complaint

Dear Mr. Rice,

I am Black. I have been discriminated against on the basis of my race by the Richmond Police Department. I submit this complaint on behalf of myself and on behalf of the many others who have been discriminated against by the Richmond Police Department.

The details of this complaint may be summarized as follows:

(1) The Richmond Police Department employs approximately 178 sworn police officers, of whom only 24 (or 13%) are black officers. In contrast, approximately 40% of the present population of the City of Richmond are Black people.

(2) All but three of the Black officers hold the entry-level rank of patrolman. Of those Black officers above the rank of patrolman, all three are sergeants (of a total of twenty-six sergeants). There are no Black captains or lieutenants. It was not until 1967 that any Black officer was promoted above the rank of patrolman.

(3) Until 1960, there were only two Black police officers in the Richmond Police Department. These two officers were assigned the most undesirable shifts and were denied membership in the Police Officers Association.

(4) Applicants for entry-level employment as a patrolman are required to pass a written test. In November, 1974, the most recent occasion on which the test was administered

and the only instance in which racial data was obtained, 79% of the white applications passed the test while only 30% of the Black applicants passed. The written test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrolman.

(5) Applicants for employment as a patrolman who pass the written test are required to pass an oral interview. In June, 1974, the most recent occasion the interview was administered and for which racial data is available, 34% of the white applicants passed the oral interview, while 0% of the Black applicants passed. The oral interview has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrolman.

(6) Police officers who seek promotion to the rank of sergeant must have three years experience as a patrolman and must rank among the top twelve in an examination consisting of a written test (weighted 10%), and a subjectively administered evaluation (weighted 90%). In the most recent examination, administered in January and February, 1974, all three Black applicants were eliminated. None of the above requirements have been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of sergeant.

(7) Police officers who seek promotion to the rank of lieutenant must have attained permanent status as a sergeant, and must pass an examination consisting solely of a subjectively administered evaluation. In the most recent examination, administered in September, 1974, all three eligible Black applications were eliminated. Neither of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of lieutenant.

(8) I am a ten-year veteran of the Richmond Police Department currently holding the rank of sergeant. I applied for but was denied promotion to the rank of lieutenant in September, 1974. I was rejected for failing to rank high enough on the subjectively administered evaluation, there-

by also barring me from reapplying for promotion for at least two years.

For years I have been attempting to eliminate the above discriminatory practices, among others. All efforts have been unsuccessful.

Finally, on March 5, 1975, I, along with other named individuals, and the Guardians of Justice filed a lawsuit alleging unlawful racial discrimination against the City of Richmond and various of its officials. (*The Guardians of Justice v. Richmond*, C-75-0439-SW. N.D. Cal., filed March 5, 1975.) That case is currently in discovery, and no trial date has been set.

It is my understanding that the Richmond Police Department has received more than one million dollars in the past few years in LEAA funds. Given the Department's discriminatory practices, I believe their continuing receipt of any LEAA monies to be unlawful.

Therefore, I hereby request you to initiate a thorough investigation of the racially discriminatory employment practices of the Richmond Police Department and to initiate administrative proceedings to suspend all LEAA funding to the Richmond Police Department.

Sincerely,

SGT. OLLIE S. GLOVER

OLG:sd

CC: The Hon. RONALD V. DELLUMS, Congressman
1417 Longworth Building
Washington, D.C. 20515

GLOVER AFFIDAVIT
EXHIBIT B

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE
ADMINISTRATION
WASHINGTON, D.C. 20531

August 22, 1975

Sgt. Ollie S. Glover
4846 State Court
Richmond, California 94804

Re: 76-C-007

Dear Sgt. Glover:

We are in receipt of your complaint alleging racial discrimination in the employment practices of the Richmond, California Police Department. We are docketing your complaint with Docket No. 76-C-007. Please refer to this number in all future correspondence.

However, you have also advised that similar issues have been raised in the case of *The Guardians of Justice v. Richmond*, C-75-0439-SW, N.D. Cal.

We take administrative notice of the pending litigation and will defer assertion of jurisdiction over the similar subject matter until there has been a judicial resolution of the matter, at which time we will review that resolution to determine whether or not it would be appropriate to consider the matter further.

We will appreciate it if you will keep us advised of the progress of the litigation.

Sincerely,

/s/_____
HERBERT C. RICE, DIRECTOR
Office of Civil Rights Compliance

By:

/s/_____
WINIFRED A. DUNTON, ATTORNEY-ADVISOR
Office of Civil Rights Compliance

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.,
PLAINTIFFS

-v-

RICHARD W. VELDE, ET AL.,
DEFENDANTS

MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Defendants, by their attorney, the United States Attorney for the District of Columbia, respectfully move the Court as follows:

I. As to plaintiffs' claims against defendants in their official capacity:

A. To dismiss this action because there is an adequate remedy in lawsuits brought directly against the police departments claimed to discriminate.

B. To dismiss this action because plaintiffs lack standing, the matter is not justifiable and there is no basis for intervention by an equity court.

C. To dismiss this action because indispensable parties have not been joined.

D. Alternatively, to grant summary judgment in favor of defendants on the ground that there is a rational basis for the manner in which defendants have proceeded in seeking to carry out the civil rights compliance responsibilities of the Law Enforcement Assistance Administration.

II. As to plaintiffs' claims against defendants for twenty million dollars in their individual capacity:

A. To dismiss this action for failure to state a claim upon which relief can be granted.

B. To dismiss this action or grant summary judgment in favor of defendants on the ground that it is barred by the doctrine of official immunity, in that the actions taken by defendants were within the outer perimeter of defendants' line of duty.

In support of this motion there are filed:

"Statement of Reasons—Explanation of LEAA's Role and Activity in Civil Rights Compliance" of Richard W. Velde, Administrator, Law Enforcement Assistance Administration, with Appendix and Attachments.

Affidavits of Edward H. Levi, Attorney General of the United States; Richard W. Velde; Charles R. Work, formerly Deputy Administrator for Administration, Law Enforcement Assistance Administration; Herbert C. Rice, Director, Office of Civil Rights Compliance, Law Enforcement Assistance Administration.

Statement of Material Facts

Memorandum of Points and Authorities

EARL J. SILBERT
United States Attorney

ROBERT N. FORD
Assistant United States Attorney

JOHN M. KELSON
Attorney
Department of Justice

NATHAN DODELL
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFF

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

AFFIDAVIT OF RICHARD W. VELDE

Washington, D.C.)
) ss.
District of Columbia)

I, RICHARD W. VELDE, being duly sworn, depose and say:

1. I, RICHARD W. VELDE, am a named defendant in the instant action. I have read the amended complaint in this action.

2. From March 1969 until August 1973 I served as Associate Administrator of the Law Enforcement Assistance Administration (LEAA). After a statutory restructuring of the Administration, I assumed the position of Deputy Administrator for Policy Development in August 1973. I remained in that capacity until I was officially sworn in as Administrator on September 5, 1974, and have served as Administrator to the present.

3. As the Deputy Administrator for Policy Development, I had no delegated civil rights authority or responsibility. My views were requested concerning policy questions in various areas, which may have included the civil rights area, although I don't recall any specific instance.

4. Upon assuming the position of Administrator, I took the initiative to make the civil rights compliance program of LEAA even more effective. As the Administrator, I am not

involved in the day-to-day civil rights compliance activities of the agency. The Director of the Office of Civil Rights Compliance has been delegated the authority and responsibility for insuring that recipients of LEAA funds comply with applicable civil rights laws, statutes, orders, rules and regulations. (Attachment 1—Delegation of Authority.) I am responsible for establishing the basic policy and direction that LEAA will pursue in meeting its civil rights obligations. In doing so, I operate under the general authority of the Attorney General. I have described in great detail the policy and direction of LEAA in the area of civil rights compliance activities in the accompanying Statement of Reasons. This affidavit essentially highlights those activities described in the Statement that relate to my personal involvement as Administrator.

5. My decision to strengthen the compliance program was officially communicated in my Statement of Priorities issued on September 9, 1974, in which I stated that in order to make the block grant approach work "[LEAA] will insist upon full State and local compliance with the applicable civil rights and equal employment opportunity program statutes".

6. I directed that a policy development seminar on civil rights compliance be convened. Approximately 40 experts in the area of civil rights, affirmative action and criminal justice were invited to Meadowbrook Hall in Rochester, Michigan on February 10 and 11, 1975, to make presentations and discuss ways of improving the compliance programs. There were three areas which were prominent on the Conference agenda. First, as there had been considerable confusion as to the best enforcement techniques to insure compliance with the civil rights provisions of the Omnibus Crime Control and Safe Streets Act, it appeared that it would be beneficial to give different experts in the area an opportunity to be heard on the subject. The issue of preselection instruments for screening applicants was discussed comprehensively. Finally, as sex discrimination in law enforcement is a particularly relevant issue, it also was extensively discussed.

Regarding the utilization of women in police service, which in response to a letter of inquiry from Congressman Rangel I had indicated to be a "novel question," at the Meadowbrook Hall Conference, I further stated:

> "[T]he point I was trying to make in the letter to Congressman Rangel was that the provisions of our law with respect to sex discrimination have not yet been significantly litigated in the courts as to the full extent of their meaning (congressional intent, and so on) and not that we weren't concerned with enforcing the provisions until we received directives from the courts. As you know, the entire history of civil rights legislation, its implementation and litigation, is that you don't understand and appreciate the full dimensions of a provision you have on the books until it is tested in the courts and you find out just what is there and what is not. That was my point in the letter, and not that we are going to sit back and wait for the courts to tell us what to do, that is not the case." (Transcript of Meadowbrook Hall Conference and List of Attendees— Attachment 2.)

7. As a direct result of the discussions and recommendations of the Meadowbrook Hall Conference, I directed the Office of Civil Rights Compliance to develop a Master Plan and Statement of Priorities. This plan examines the principal problems encountered by LEAA in the implementation of its compliance program and suggests ways in which the compliance program may be strengthened, given a better identification and utilization of resources available at the Federal, State and local level to approach the enforcement of civil rights compliance obligations of LEAA's criminal justice constituency. The Master Plan was circulated for comment among prominent blacks in the criminal justice community as well as the Civil Rights Commission, the Hispanic Criminal Justice Task Force, the International Association of Chiefs of Police, the Equal Employment Opportunity Commission, the Department of Labor, the National League of Cities, the Police Foundation, the American Bar Association, the National Urban League, and the Women's Equity Action League. The Master Plan will be issued in final in February 1976.

8. I was invited to address the Second Annual Conference on Blacks and the Criminal Justice System held on February 5, 1975. I stated before this body that:

> "One of my priorities as Administrator to strengthen the LEAA operations is an emphasis on the enforcement of civil rights compliance responsibilities by LEAA recipients. During the weeks and months ahead, LEAA will work to assure full compliance with the civil rights laws."

9. Based on the recommendations of black leaders in the criminal justice field, I authorized the position of Special Assistant to the Administrator on Women and Minority Rights. The position is located on my immediate staff and the Special Assistant (GS–15 level) directs, provides leadership and coordinates the efforts of LEAA and its staff in the area of minority and women's rights and in this capacity serves as my confidential consultant. The Special Assistant serves as my personal representative in consultation with various State and national groups and provides guidance and advice on the development of pertinent programs applicable to civil rights statutes, rules and regulations for law enforcement programs, grants and contracts. I have chosen an extremely qualified individual, Mr. Lewis Taylor, for this position. On December 22, 1975, Mr. Taylor assumed this position. For a period of time prior to that date, Mr. Reynaldo Maduro had been acting in that capacity. Mr. Maduro is the Director of the LEAA Executive Secretariat and was formerly Executive Director of the Cabinet Committee on Opportunities for Spanish-Speaking People.

10. On February 18, 1975, LEAA sponsored a conference at my direction with numerous prominent blacks in the criminal justice area and those blacks with an interest in the criminal justice area. Also in attendance for part of the conference was Edward H. Levi, Attorney General of the United States. The purpose of the meeting was to assure that the policy and program directions of LEAA most accurately reflected the relevant needs and concerns of black citizens that come in contact with the criminal justice system. A steering committee was established by the participants of the conference which met through May. I met with

the committee on May 16, 1975, and a number of recommendations were discussed. I received a letter from Lee P. Brown, Coordinator of the Steering Committee, which outlined the items discussed by the committee and stated that:

> "On behalf of the Steering Committee on Blacks and the Criminal Justice System, I thank you for the personal interest you have taken in the problems of Blacks and Criminal Justice. We are encouraged by your efforts in this area.
>
> "Also, the members of the Steering Committee felt that the meeting with you on May 16, 1975 was very productive. We feel that your response to our suggestions and recommendations made the time we have been devoting to this concern well worthwhile. Hopefully, by working together, we will achieve results that will benefit all citizens."

11. In a letter dated July 28, 1975, I informed Mr. Brown of the status of the recommendations that the Steering Committee had made. I expressed my support of a ten- to fifteen-member committee as an advisory body to LEAA relative to minority issues. I stated that I would give serious consideration to the nominees submitted by the Steering Committee but that I have the option to consider other appropriate nominees to insure broad minority representation. The actual coordination and establishment of the advisory committee is one of the functions of my new Special Assistant.

I also agreed with the need to involve minority firms with LEAA contracts and in furtherance of that goal reported:

> "By agreement with the Small Business Administration, the Agency has permission to negotiate with an 8-A firm thereby eliminating the required procedure of submitting a response to a request for a proposal."

12. Due to LEAA's involvement in the civil rights area, I was invited to the White House, along with Deputy Administrator Charles Work and Office of Civil Rights Compliance Director Herbert Rice, on April 15, 1975, to meet with 75 black civic leaders from across the Nation to dis-

cuss law enforcement problems relating directly to blacks. Those black leaders in attendance included several black law enforcement officials, attorneys, judges, and officials of civic and service organizations. A strong and effective civil rights compliance program was enunciated as an important LEAA priority to help insure total community involvement.

13. OCRC is now working toward enhancing the State's capacity to deal with civil rights compliance thereby increasing the resources available in this area. On January 21, 1976, guidelines became effective setting up a system for complaint processing in which State and local agencies are actively involved. Additional objectives of OCRC include increasing the number of EEOP audits, prebid conferences, audit of construction contracts to assess and assure contractor's compliance with required civil rights assurances, and to increase and improve technical assistance afforded criminal justice agencies to improve their understanding of civil rights issues.

14. I have proposed amended equal employment regulations removing the stated preference for judicial enforcement procedures, 40 Fed. Reg. 5654, December 3, 1975.

15. Although I am not involved with the daily operations of OCRC, occasionally I am called upon to take action on pending cases.

16. On August 26, 1975, after being apprised of the utilization of a discriminatory minimum height rquirement of the Honolulu Police Department and the failure of voluntary compliance efforts, I sent a letter to Governor George R. Ariyoshi of Hawaii, notify him of the discriminatory practice and the inability to achieve compliance through voluntary means. I warned that failure to resolve this matter will result in the institution of appropriate legal proceedings to enforce compliance.

Governor Ariyoshi responded on September 26, 1975, that substantial efforts and significant progress were being made by Honolulu officials. A letter dated September 29, 1975, was sent by the Civil Service Director of Honolulu to

the Honolulu Chief of Police (with LEAA also being sent a copy) stating that:

> "This is to inform you that we have deleted the height requirement from the minimum qualifications standards for all entry level police officers and police matron classes, effective September 29, 1975."

17. In February 1975 I was made aware of a non-compliance matter involving the Police Department of St. Louis in which I was prepared to take enforcement action. In that matter, officials in St. Louis, upon learning that they faced the prospect of such action by LEAA, voluntarily complied, obviating the necessity of taking enforcement action.

18. In mid-January 1975, I was apprised of the fact that the cities of Pittsburgh and McKeesport had failed to complete an Equal Employment Opportunity (EEO) plan covering the local Police Departments as required. Cornelius M. Cooper, Regional Administrator of LEAA, located in Philadelphia, wrote to John Snavely, the Executive Director of the Pennsylvania State planning agency, on January 24, 1975, directing that the State planning agency not award any further subgrants to those cities until compliance with the EEO Guidelines was achieved. The action was done with my knowledge and support. The cities of McKeesport and Pittsburgh have now submitted satisfactory EEO plans.

19. On January 29, 1976, I sent a letter to the Governor of Pennsylvania advising him of the non-compliance of the Philadelphia Police Department and requesting his assistance in securing such compliance. If the Governor cannot secure compliance by March 29, 1976, LEAA will initiate fund-termination proceedings pursuant to § 509 of the Crime Control Act.

20. On January 16, 1976, I sent a letter to the Governor of South Carolina notifying him of the non-compliance of the South Carolina Highway Patrol. The Governor was given until March 1, 1976, to try to secure compliance. If voluntary efforts fail to resolve the situation, LEAA will initi-

ate fund-termination proceedings pursuant to § 509 of the Crime Control Act.

21. In my capacity as Administrator, I have authorized numerous discretionary and technical assistance grants to enhance minority opportunities and involvement with law enforcement and criminal justice activities. Discretionary grants, which are available to units of local government, are dispensed directly by LEAA to approved applicants. These funds are viewed as a means by which the LEAA can advance priorities and provide special emphasis for reform and experimentation with the total law enforcement structure. Technical assistance has been rendered to improve the understanding of criminal justice agencies of civil rights issues and to facilitate the development of procedures which may adequately reflect community needs. (Attachment 3).

22. My actions as described above and further presented in my Statement of Reasons were fully in the discharge of my official duties and responsibilities as Administrator. Furthermore, in addition to my knowledge of the actions of Charles R. Work and Herbert C. Rice as their superior, I have reviewed their affidavits and have determined that their actions were fully in the discharge of their official duties and responsibilities.

/s/ _____
RICHARD W. VELDE

Subscribed and sworn to before me this 6th day of February 1976.

/s/ _____
RENE F. KELLY
Notary Public

My Commission expires Feb. 14, 1978.

VELDE AFFIDAVIT
Attachment 1

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

INSTRUCTION

October 31, 1974

Subject: DELEGATION OF AUTHORITY TO THE DIRECTOR, OFFICE OF CIVIL RIGHTS COMPLIANCE (OCRC)

1. *PURPOSE.* The purpose of this Instruction is to delegate the authority for the administration and operation of the Office of Civil Rights Compliance to its Director.

2. *SCOPE.* This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION.* This Instruction cancels LEAA Instruction I 1310.24 dated March 18, 1974.

4. *FUNCTIONAL DELEGATION.* The Director, Civil Rights Compliance is delegated the authority and responsibility for ensuring that recipients of LEAA funds comply with applicable civil rights laws, statutes, orders, rules and regulations.

a. *Regulations.* Develop regulations to ensure compliance with civil rights requirements of the LEAA program by recipients of LEAA funds.

b. *Directives and Guidelines.* Develop directives to ensure compliance with civil rights requirements of the LEAA program by recipients of LEAA funds.

c. *Technical Assistance.* Consult with the Office of National Priority Program on methods to provide technical assistance to recipients of LEAA funds for the development of ways and means to assure compliance with civil rights regulations and statutes.

d. *Representation.* Ensure that efforts for the enforcement of nondiscrimination requirements in federal programs are coordinated with other federal agencies including the development of programs for the collection, analysis and use of report data and information to ascertain compli-

ance with civil rights requirements. Coordinate civil rights compliance efforts to ensure full utilization of state and local resources.

e. *Audits, Examinations and Investigations.* Conduct inspections, investigations and reviews as required to ensure compliance with civil rights requirements and to gather facts about alleged civil rights violations. In reference to audits, leads will be referred to OCRC by the Office of Inspector General for followup actions.

f. *Negotiations and Sanctions.* Conduct negotiations with recipients of LEAA funds, where necessary, to achieve voluntary compliance and recommend, in consultation with the General Counsel, the application of sanctions, if necessary.

g. *Case Preparation.* Assist the LEAA General Counsel and the divisions of the Department of Justice in the preparation of civil rights compliance cases involving recipients of LEAA funds.

h. *Grants and Program Management.* Subject to the policy direction, allocation of funds and directives issued by the Administration, the Director of OCRC is delegated the authority to administer, modify, (not to exceed the original dollar amount of the approved award) extend, terminate, monitor and evaluate grants and agreements within the program areas of assigned responsibility. In this respect, grants may be extended for up to 12 months; however, the total period of award for any grant may not exceed 24 months.

REDELEGATION. Authority delegated in this Instruction may be redelegated, in whole or in part, provided that any redelegation is in writing and approved by the Administrator. This restriction does not apply to temporary redelegation of authority to a deputy or an assistant to be exercised during the Director's absence. Authority redelegated by the Director shall be exercised subject to the Director's policy direction and coordination and under such restrictions deemed appropriate.

RECORDS. The Office of Civil Rights Compliance shall keep such records concerning the delegations in paragraph 4 as the Assistant Administrator, Office of Operations Sup-

port and the Comptroller shall require. These records shall be forwarded to these offices as required.

/s/
RICHARD W. VELDE
Administrator

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVITS

WASHINGTON, D.C.)
) ss.
DISTRICT OF COLUMBIA)

I, Edward H. Levi, being duly sworn, hereby depose and say:

1. I am the Attorney General of the United States and have held this position since taking the oath of office on February 6, 1975.

2. I have reviewed the Amended Complaint in the above-styled action.

3. As Attorney General, I have vested in me by virtue of Title I, Section 101(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (the "Act"), as amended, 42 U.S.C. § 3711, certain powers and duties relating to the Law Enforcement Assistance Administration (the "Administration").

4. Section 101(a) of the Act provides that the Administration "is hereby established within the Department of Justice, under the general authority of the Attorney General." This provision, as construed in consonance with the Act's legislative history by past Attorneys General, empowers the Attorney General to exercise powers of general policy guidance, budgetary review, and regulatory supervision without the Attorney General ordinarily involving him-

self in the details of the Administration's grant-making process. See memorandum dated June 26, 1968, prepared by the Assistant Attorney General of the Office of Legal Counsel. [Attachment 1 hereto.] Nor does the Attorney General exercise day-to-day supervision over the operations of the Administration. See memorandum dated September 19, 1973, prepared by the Assistant Attorney General of the Office of Legal Counsel [Attachment 2 hereto.] As stated by former Assistant Attorney General Dixon: "The language and legislative history of Section 101 of the Omnibus Crime Control and Safe Sreets Act clearly indicates that the Administration was [not] to be . . . under the same direct supervision and control as are other Divisions in the Department of Justice." *Id.*, pp. 6–7.

5. In the exercise of powers of general policy guidance and regulatory supervision, past Attorneys General, in conjunction with the Administration, have issued regulations expressing the principle that no recipient of federal funding, including "law enforcement agencies," extended by the Department of Justice under the Act, "shall discrimiante in its employment practices against employees or applicants for employment because of race, color, creed, sex, or national origin." 28 C.F.R. § 42.203.

6. The applicable regulations provide that recipients, applying for assistance under the Act, must include assurances in their applications that they will comply with the Department's requirements prohibiting discriminatory employment practices. 28 C.F.R. § 42.204(a)(1). Failure to comply with these assurances may result, after opportunity for hearing, in the termination of federal assistance to the recipient. 28 C.F.R. §§ 42.101, *et seq.*

7. However, neither the Act nor policy of the Department of Justice encourages the termination of federal assistance without recourse to voluntary means. 42 U.S.C. § 3766(c)(2); 28 C.F.R. § 42.108(c). In fact, as a precondition to the termination of federal assistance under the Act, efforts at securing voluntary compliance by the recipient must have failed before resort to this sanction may be had. *Id.*

8. As part of the Jutice Department's efforts to secure civil rights compliance where there are allegations of discriminatory employment practices, the Civil Rights Division of the Department has commenced litigation where deemed appropriate, *e.g.*, in suits against the City of Chicago, the City of Philadelphia, the State of New Jersey (New Jersey State Police), the State of Michigan (Michigan State Police), and the State of North Caolina (North Carolina State Police). [See Atachment 3 hereto.]

9. I have reviewed the affidavits of Richard W. Velde, Charles R. Work, and Herbert Rice together with the Statement of Reasons signed by Mr. Velde and have concluded that the actions taken by defendants Velde, Work and Rice as described therein were taken by them well within their official duties and responsibilities.

/s/ _____
EDWARD H. LEVI

Subscribed and sworn to before me this 9th day of February 1976.

/s/ _____
AUDREY J. WILLIAMS
Notary Public

My commission expires March 11,1979

Attachments 1 and 2 are omitted

LEVI AFFIDAVIT

Attachment 3

Representative of the cases brought by the Department of Justice against, *inter alia*, law enforcement agencies on the basis of alleged discriminatory employment practices are the following:

(1) *United States* v. *the City of Miami, Florida, et al.*, U.S.D.C. S.D.Fla., Civil Action No. 75–3096–Civ–JE;

(2) *United States* v. *State of North Carolina, et al.*, U.S.D.C. E.D.N.C., Civil Action No. 75–0328–Civ5;

(3) *United States* v. *State of New Jersey, et al.*, U.S.D.C. D.N.J., Civil Action No. 75–1734;

(4) *United States* v. *State of Michigan, et al.* U.S.D.C. W.D.Mich., Civil Action No. G75–472;

(5) *United States* v. *County of Hawaii, et al.*, U.S.D.C. D.Hawaii, Civil Action No. 75–0291;

(6) *United States* v. *Pima County, et al.*, U.S.D.C. D.Ariz., Civil Action No.75–195;

(7) *United States* v. *City of Wichita Falls, Texas, et al.*, U.S.D.C. N.D. Texas, Civil Action No. 7–75–31;

(8) *United States* v. *Jefferson County, et al.*, U.S.D.C. N.D.Ala., Civil Action No. 75–P–06665;

(9) *United States* v. *the City of Tallahassee, Florida, et al.*, U.S.D.C. N.D.Fla., Civil Action No. TCA 74–209;

(10) *United States* v. *City of Milwaukee, et al.*, U.S.D.C. E.D.Wisc., Civil Action No. 74–C–480;

(11) *United States* v. *City of Memphis, et al.*, U.S.D.C. W.D.Tenn., Civil Action No. C–74–286;

(12) *United States* v. *The City of Philadelphia, et al.*, U.S.D.C. E.D.Pa., Civil Action No. 74–400;

(13) *United States* v. *State of Maryland, et al.*, U.S.D.C. D.Md., Civil Action No. 74–8;

(14) *United States* v. *City of Chicago, et al.* U.S.D.C. N.D.Ill., Civil Action No. 73 C–2080;

(15) *United States* v. *City of Buffalo, et al.*, U.S.D.C. W.D.N.Y., Civil Action No. 1973–414; and

(16) *United States* v. *City of Montgomery, Alabama, et al.*, U.S.D.C. M.D.Ala., Civil Action No. 3739–N.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75–1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

AFFIDAVIT OF CHARLES R. WORK

Washington, D.C.)
) ss.
District of Columbia)

I, CHARLES R. WORK, being duly sworn, depose and say:

1. I, CHARLES R. WORK, am named as party defendant in the above-entitled action. I have read the amended complaint filed in this action, and I am familiar with the allegations contained therein.

2. From November 2, 1973, until November 21, 1975, I served as Deputy Administrator for Administration of the Law Enforcement Assistance Administration. On November 21, 1975, I resigned this position and entered into the private practice of law. On January 2, 1976, the date of the filing of the amended complaint, I was no longer affiliated with LEAA.

3. In my position as Deputy Administrator for Administration I had certain delegated authority. This authority involved taking final action on internal LEAA administrative management matters including: personnel management, audits, internal fiscal and financial management, procurement of goods and services and property and records management. (Attachments A, B, C, and D.)

4. While I did not have any delegated authority in the day-to-day operations of LEAA's civil rights program, certain of my activities did involve me in a limited way in the civil rights area, and during the time from November, 1973 until September, 1974 when Donald Santarelli was Administrator, all the office heads, including Herbert C. Rice, reported to me periodically with respect to operations questions. Policy questions were referred to and discussed with the Administrator and the Deputy Administrator for Policy Development.

5. It was my responsibility to maintain liaison with the State Planning Agency Directors. I favored and encouraged broadening the role of the State planning agencies in the civil rights investigation and enforcement area.

6. On August 19, 1974, I reviewed and signed a guideline concerning representation of minorities and women on supervisory boards of criminal justice State planning agencies and regional planning units. The guideline required that no individual on the basis of race, color, sex or national origin be denied appointment or selection to serve on supervisory boards of State planning agencies or regional planning units existing pursuant to Section 203(a) of the Crime Control Act of 1973.

7. I maintained liaison with John Calhoun of the President's staff on minority affairs in preparation for the April 15, 1975, conference with black leaders to discuss law enforcement problems related directly to blacks. I attended that conference along with Administrator Richard W. Velde and Herbert C. Rice, Director, Office of Civil Rights Compliance.

8. On February 18, 1975, I participated in a "Conference on Black Citizens and Criminal Justice." This meeting, attended by representatives of various community and civil rights groups throughout the nation, was designed to help officials at LEAA work with community representatives in an effort to improve LEAA's programs with respect to involving minority groups in criminal justice, facilitating police-community relations, and enhancing the civil rights compliance programs. As I stressed to the participants of

the conference we wanted to get their ideas about how we could operate our program even more effectively.

9. I had no regular direct contact with the day to day operations of the Office of Civil Rights Compliance. I therefore had no involvement with the named plaintiffs except for Penelope Brace. In January 1974 I was asked to take certain action to insure that Officer Brace would not be suspended without pay from her job. The issue, as presented to me, was a question of retaliation because Officer Brace had filed a complaint of discrimination. Because I knew Stanley Pottinger, Assistant Attorney General, Civil Rights Division, I was asked by the Office of General Counsel on an emergency basis to advise Mr. Pottinger of the Philadelphia Police Department's activities. I placed a telephone call to Mr. Pottinger to request the Department of Justice's immediate action to insure that Officer Brace would not be dismissed. Given the situation at the time, it was my opinion that immediate resort to the courts was the only action to be taken to keep Ms. Brace from being terminated from the police department.

10. Because of my initial involvement in this matter, I was kept apprised of this particular situation.

In June 1974, I signed a letter to Mr. Hillel Levinson, Managing Director of the City of Philadelphia, in response to a letter from him regarding the city's request for continuation of two $1,000,000 crime reduction grants. The purpose of my letter was to inform them that they would not receive approval of these grants until we were assured that Ms. Brace was permanently restored to duty and would not be retaliated against. The letter stated that final approval of these grants was being considered in the context of satisfactory progress in the litigation concerning Officer Brace. It also stated that I hoped that Mr. Levinson would impress upon the City Solicitor's Office the importance of moving quickly toward a resolution of the case. It is my understanding that Officer Brace was ordered restored to duty. The two grants in question were not awarded by the LEAA Philadelphia Regional Office until the following year.

11. To my best recollection and belief, I had no further role in any specific civil rights action. I felt then, as I do now, that LEAA has a positive and aggressive civil rights program; and I often said that I wanted LEAA to have the best civil rights program in the federal government. I have worked for and spoken in support of civil rights for minority groups and women. As Deputy Administrator for Administration, I acted fully in the discharge of my official duties and responsibilities. The accusation that I did otherwise is completely untrue and unfair.

CHARLES R. WORK

Subscribed and sworn to before
me this 30 day of January 1976.

BEVERLY JEAN LEWIS
Notary Public

My Commission expires: 1-1-80

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

November 21, 1973

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate to the Deputy Administrator for Administration the authority to take final action on all administrative management matters vested in the Administrator pursuant to Section 101 of the Crime Control Act of 1973.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *DEFINITION*. For the purposes of this Instruction, this authority includes, but is not limited to, personnel management, audits, internal fiscal and financial management, procurement of goods and services, property and records management. This Instruction does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they may be inconsistent with the provisions hereof.

4. *DELEGATION*. The Deputy Administrator for Administration is delegated the authority and responsibility for the administrative management of LEAA. He is authorized to sign all letters, documents, and records related to these activities.

/s/_____
DONALD E. SANTARELLI
Administrator

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

September 9, 1974

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate authority to the Deputy Administrator for Administration.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION*. This Instruction cancels LEAA Instruction I 1310.16, Delegation of Authority to Deputy Administrator for Administration, dated November 21, 1973.

4. *DEFINITION*.

a. *For the purposes of this Instruction*, administrative management includes, but is not limited to:

(1) Personnel management,

(2) Audits,

(3) Internal fiscal and financial managements,

(4) Procurement of goods and services, and

(5) Property and records management.

b. *This Instruction* does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they are inconsistent with this Instruction.

5. *ACTION.*

a. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA administrative management matters except for personnel management.

b. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA personnel management matters except in regard to Central Office Heads, Regional Administrators, and GS 16 positions and above.

c. *The Deputy Administrator for Administration* is delegated the authority to sign all letters, documents, and records relating to the administrative management matters delegated in this Instruction.

6. *REDELEGATION.* The Deputy Administrator for Administration is authorized to redelegate, in whole or in part, the authority delegated in this Instruction provided the redelegation is in writing and approved by the Administrator.

/s/_____

RICHARD W. VELDE
Administrator

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

January 14, 1975

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate authority to the Deputy Administrator for Administration.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION*. This Instruction cancels LEAA Instruction I 1310.16A, Delegation of Authority to Deputy Administrator for Administration, dated September 9, 1974.

4. *DEFINITION*.

a. *For the purpose of this Instruction*, administrative management includes but is not limited to:

(1) Personnel management,

(2) Audits,

(3) Internal fiscal and financial managements,

(4) Procurement of goods and services, and

(5) Property and records management.

b. *This Instruction* does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they are inconsistent with this Instruction.

5. *ACTION.*

a. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA administrative management matters except for personnel management.

b. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA personnel management matters with the following exceptions:

(1) Managerial positions at the Division Chief and the Office Head levels in the Central Offices and Regional Offices, or

(2) GS–16 positions and above.

c. *The Deputy Administrator for Administration* is delegated the authority to sign all letters, documents, and records relating to the administrative management matters delegated in this Instruction.

6. *REDELEGATION.* The Deputy Administrator for Administration is authorized to redelegate, in whole or in part, the authority delegated in this Instruction provided the redelegation is in writing and approved by the Administrator.

/s/_____

RICHARD W. VELDE
Administrator

WORK AFFIDAVIT
Attachment

UNITED STATES
DEPARTMENT OF JUSTICE

LAW ENFORCEMENT
ASSISTANCE ADMINISTRATION

Instruction

August 22, 1975

Subject: DELEGATION OF AUTHORITY TO DEPUTY ADMINISTRATOR FOR ADMINISTRATION

1. *PURPOSE*. The purpose of this Instruction is to delegate authority to the Deputy Administrator for Administration.

2. *SCOPE*. This Instruction is of interest to all LEAA personnel.

3. *CANCELLATION*. This Instruction cancels LEAA Instruction I 1310.16B, Delegation of Authority to Deputy Administrator for Administration, dated January 14, 1975.

4. *DEFINITION*.

a. For the purpose of this Instruction, administrative management includes but is not limited to:

(1) Personnel management,

(2) Audits,

(3) Internal fiscal and financial management,

(4) Procurement of goods and services, and

(5) Property and records management.

b. *This Instruction* does not rescind or amend those delegations for day to day operations in the administrative management area previously authorized and in effect at this time except to the extent that they are inconsistent with this Instruction.

5. *ACTION.*

a. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA administrative management matters except for personnel management.

b. *The Deputy Administrator for Administration* is delegated the authority to take final action on all LEAA personnel management matters with the following exceptions:

(1) Managerial positions at the Division Chief and the Office Head Levels in the Central Offices and Regional Offices, or

(2) GS–16 positions and above.

c. *The Deputy Administrator for Administration* is delegated the authority to sign all letters, documents, and records relating to the administrative management matters delegated in this Instruction.

6. *EXCEPTION. The Deputy Administrator for Administration* is not delegated any authority to participate, either directly or indirectly, in the consideration, award, and administration of any application for LEAA funds submitted directly or indirectly by the District of Columbia Bar or of any contract or grant of LEAA funds made directly or indirectly to the District of Columbia Bar.

7. *REDELEGATION.* The Deputy Administrator for Administration is authorized to redelegate, in whole or in part, the authority delegated in this Instruction provided the redelegation is in writing and approved by the Administrator.

/s/_____

RICHARD W. VELDE
Administrator

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFFS

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

AFFIDAVIT OF HERBERT C. RICE

Washington, D.C.)
) ss
District of Columbia)

I, HERBERT C. RICE, being duly sworn, depose and say:

1. I am named as party defendant in this action. I have read the Amended Complaint.

2. I am the Director of the Office of Civil Rights Compliance (OCRC) of the Law Enforcement Assistance Administration and have served in this capacity since May of 1971.

3. OCRC has the responsibility of establishing comprehensive procedures and programs for effective enforcement of civil rights responsibilities of recipients of LEAA financial assistance in accordance with Federal law.

4. I am familiar with the "Statement of Reasons—Explanation of LEAA's Role and Activity in Civil Rights Compliance" of Richard W. Velde, Administrator of LEAA, that is being filed in this action. Because of OCRC's responsibility, the policies which my staff and I have formulated and implemented are dealt with at length in the Statement. It is obvious from the content of the Statement that a number of judgments must be made daily by me both in making policy and in making decisions to carry out policy. Judgments involving the exercise of discretion are made in such areas as determining the content of regulations, in making assessments of whether there is compliance with

law and regulation, and in deciding the appropriate steps to be taken in negotiaton and enforcement of matters relating to compliance with law and regulation.

5. It would be redundant for me to repeat the matters discussed by Administrator Velde in the Statement. Much of the work that was done in drafting and issuing regulations and guidelines was done by me or under my supervision, as was the preparation of the Master Plan and Statement of Priorities, referred to at pages 11–12. OCRC performs the functions described at pages 21 to 37 of the Statement of Reasons. OCRC's activities with regard to the police departments that are the targets of individual plaintiffs are discussed in the Appendix to the Statement of Reasons.

6. The Statement of Reasons describes the growth and structure of OCRC. Pages 21 *ff*. The way OCRC has functioned procedurally is this:

Ordinarily, I am advised of progress in the activities of various operating units of OCRC at weekly staff meetings, through periodic meetings with Division Chiefs and ad hoc memoranda from such Division Chiefs, where specific problems of policy and resolution of matters of specific concern to the office arise.

Similarly, I advise the Administrator of LEAA as to the progress of the office in addressing its responsibilities in periodic meetings and memoranda. Along with other operating managers, problems germane to broad policy of LEAA are discussed at staff meetings.

In interpreting law or policy, I seek the counsel and advice of the Administrator, the General Counsel of LEAA, and LEAA's Office of Planning and Management, as appropriate. During the time that Mr. Santarelli was Administrator, I along with other operating office heads, reported directly to Mr. Work, the then Deputy Administrator for Administration, seeing Mr. Santarelli only when matters of broad policy or difficult problems relating to the resolution of individual cases might have needed to be discussed.

OCRC also develops draft regulations and guidelines, which, in consultation with the Office of General Counsel,

are circulated for appropriate internal and external review and comment, prior to adoption.

7. I have a strong and firm commitment to securing civil rights compliance by recipients of LEAA funding. I believe that the Statement of Reasons, reflecting LEAA and OCRC activities, demonstrates this commitment. I have considered it responsible, appropriate and in keeping with law, regulations, and Department of Justice policy to make meaningful efforts to resolve problems by negotiation before starting proceedings leading to termination of funding. I also have sought to make the most effective use possible of the resources of OCRC in seeking to secure compliance. To carry this out, I have tried to avoid duplication of effort and have attempted to use other resources available in effecting civil rights compliance. These matters are dealt with at length in the Statement of Reasons.

8. In all actions taken by me as recounted in the Statement of Reasons and in all actions that I have taken in relation to the matters alleged in the Amended Complaint, I have acted fully within the scope of my official duties and responsibilities as Director of the Office of Civil Rights Compliance. I have taken all these actions in the belief that they were the best way to effectuate the civil rights provisions of the Crime Control Act and the other civil rights laws and regulations affecting the LEAA program.

HERBERT C. RICE

Sworn to and subscribed before
me this 6th day of February 1976.

ROSE L KELLY
Notary Public

My Commission expires: Feb. 14, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75–1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.
PLAINTIFFS

v.

RICHARD W. VELDE, ET AL.
DEFENDANTS

STATEMENT OF REASONS

Explanation of LEAA's Role and Activity in Civil Rights Compliance

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action Number 75–1444

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

STATEMENT OF REASONS

EXPLANATION OF LEAA'S ROLE AND ACTIVITY IN CIVIL RIGHTS COMPLIANCE

Introduction

This lawsuit calls into question the performance of the Law Enforcement Assistance Administration with regard to its civil rights responsibilities. An explanation of LEAA's performance requires a discussion of: the establishment and purposes of LEAA; LEAA's civil rights activities; and the practicalities of administering a meaningful program of civil rights compliance. In addition, a discussion of the specific situations addressed by plaintiffs is called for. The body of this Statement of Reasons addresses the general issues presented by the lawsuit. Appendices deal with the specific situations.

I. *The Establishment and Purposes of LEAA*

A. *Policy*

Recognition of the marked increase in crime and lawlessness in the early and mid-60's prompted Congress to take necessary measures to meet this crisis situation. The Congressional action resulted in the creation of the Law En-

forcement Assistance Administration established in the Department of Justice under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90–351, 82 Stat. 197, 42 U.S.C. §3701 *et seq.*). As set forth in the preamble of the Crime Control Act, "the high incidence of crime in the United States threatens the peace, security, and general welfare of the Nation and its citizens. To reduce and prevent crime and juvenile delinquency and to insure the greater safety of the people, law enforcement and criminal justice efforts must be better coordinated, intensified, and made more effective at all levels of government."

In furtherance of this declaration, LEAA is to assist States and units of local government in improving and strengthening law enforcement and criminal justice. In the Declaration and Purpose the Congress stated:

> "It is the purpose of this title to (1) encourage States and units of general local government to develop and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement and criminal justice; (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement and criminal justice; and (3) encourage research and development directed toward the improvement of law enforcement and criminal justice and the development of new methods for the prevention and reduction of crime and the detection, apprehension, and rehabilitation of criminals."

The basic purpose of LEAA is to seek to address the problem that crime presents in our society. The crime problem is in itself a major obstacle in securing liberty to the people of America. As Attorney General Edward H. Levi said in his address to American Bar Association Convention at Montreal on August 13, 1975:

> "For some years the federal government acted as if its abilities in bringing crime under control were limitless. It created expectations in the public that could not be met. Public disappointment provoked, not a reexamination of the basic assumptions of the federal government's efficacy, but rather an increasing em-

phasis on toughness, even vindictiveness against those convicted of crime. This obscured a feature of the crime problem that is important now to reconsider. *Every success in reducing crime—especially street crime people fear most—is a victory for individual liberty so long as the success does not come at the expense of constitutional rights guaranteed criminal defendants. The sense of vindictiveness that intruded upon the discourse about crime led to the misapprehension that prosecuting criminals somehow infringes upon rights rather than protects them.*

"Serious crime rose 18 percent during the first three months of 1975 compared with the same period last year. In 1974 serious crime was up 17 percent, according to the FBI's Uniform Crime Statistics. Increases in the rate of violent street crime have paralleled the total increase. *These sad figures do not begin to measure the effect on individual freedom increasing crime has had. It has affected not only the immediate victims of violence and theft; it has also embedded fear in the minds of countless Americans. Freedom of movement, freedom of association, even the freedom to rest secure in one's own house have been impaired.*

"*Law enforcement is a central part of the protection of human rights.* The sentiments that lead officials to believe it is better to minimize law enforcement in poor and minority group neighborhoods of our cities are at best misguided. A study by the Law Enforcement Assistance Administration of crime in five large cities showed that blacks were nearly twice as likely as whites to be the victims of robbery or burglary. In four of those cities blacks were also more likely than whites to be the victim of violent aggravated assault. *Lack of adequate law enforcement, more so even than lack of other government services, deprives the poor of their right to live a decent life.*" (Emphasis added.)

As another example of the responsibilities of LEAA in meeting the pressing needs of the Nation in fighting crime, LEAA has a significant responsibility for increasing the capacity of State and local agencies to deal constructively with delinquency prevention and juvenile justice. As I said

in a statement of September 9, 1974, in discussing my responsibilities as new LEAA Administrator:

> " . . . Youths commit much of the violent crime and much of the stranger-to-stranger offenses listed in the Federal Bureau of Investigation's index. Although LEAA cannot by itself remedy the problems associated with family dissolution, poverty, undereducation, rootlessness, alienation, unemployment, and racial discrimination, it must face up to the relationship these conditions have to criminal justice and creatively seek workable solutions. This includes coordinating with other Federal, state and local officials as well as with volunteer groups and all others interested in helping the young. Juvenile delinquency is not only a crime-control issue—it is also a matter of our nation's future as a free society."

At a meeting with 75 black civic leaders at the White House on April 15, 1975, I said:

> "LEAA in its efforts to improve criminal justice, is striving to encourage mutual responsibility between citizens and the criminal justice system. That means involving the community—individual citizens, neighborhoods, schools and churches—in crime reduction efforts . . . . "

Accordingly, it is important that LEAA administer its activities in such a way as to do the best job possible in assisting crime fighting and thereby enhancing liberty. LEAA's civil rights compliance efforts are an important part of these activities and LEAA administers civil rights activities, to the extent possible, in a way that will promote rather than interfere with its assignment to help States and localities fight crime.

For example, cutting off funds is not an end in itself: it is a means toward effecting civil rights compliance. Termination of funding in and of itself may not provide equal employment opportunity and eliminate discrimination.*

---

*Indeed termination can have an adverse impact on minorities and women because they may be the most recently hired and therefore hurt by firings and layoffs.

Where voluntary compliance can be accomplished without interfering with funding of the fight against crime, LEAA will seek to do so. We are not dealing with an either–or proposition. LEAA is seeking to effect civil rights compliance and to assist in combating crime.

B. *Procedure*

Pursuant to the Act, LEAA makes annual "block" grants to each of the States for planning and implementing law enforcement programs. The grants are made to State planning agencies which in turn make subgrants to units of local government for criminal justice agencies in the State. LEAA also makes discretionary grants through State planning agencies to criminal justice agencies in the State.

LEAA has made block grants to all the States since Fiscal Year 1969. Funds appropriated by Congress for LEAA's block grants are allocated under Title I of the Crime Control Act in lump sums among the States on the basis of population for distribution and expenditure by the States and cities. The grant funds are used for programs and priorities determined by the States and cities themselves (82 Stat. 190, 202, 42 U.S.C. §3736).

LEAA makes both block planning and action grants. Block planning grants are utilized by the States to establish and maintain the State planning agencies referred to above as well as to fund regional and local planning bodies. The State planning agency is created or designated by the Chief Executive of the State and is subject to his jurisdiction (82 Stat. 199, 42 U.S.C. §3722). Each State planning agency determines needs and priorities for the improvement of law enforcement throughout the entire State and the State planning agency then defines, develops, and correlates programs to improve and strengthen law enforcement for the State and all of the units of local government within the State. All of this material and information is incorporated into a comprehensive State-wide plan which is annually submitted to LEAA for review and approval (82 Stat. 198, 42 U.S.C §3723).

When a State's plan has been reviewed and approved, the State is eligible to receive its allocated block action

grant for that fiscal year. LEAA is required by statute to make block action grants if the State planning agency has an approved comprehensive plan which conforms with the purposes and requirements of the Crime Control Act (82 Stat. 201, 42 U.S.C. §3733) and with rules, regulations, and procedures established by LEAA consistent with the Crime Control Act.

Eighty-five percent of the LEAA action funds are "block" grant monies running directly to the State planning agencies for distribution in accordance with pre-determined State and local priorities. Only 15 percent is then distributed by LEAA directly for national program priority items.

Discretionary funds, which are also available to units of local government under the Act, are dispensed by LEAA to approved applicants. These funds are viewed as a means by which the LEAA can advance national priorities, draw attention to programs not emphasized in State plans, and provide special impetus for reform and experimentation within the total law enforcement structure created by the Act. Discretionary funds represent only a small portion of the aid that will be available to State and local governments and are not intended to meet the massive and widespread need the State plan and block grant action funds must address.

II. *LEAA's Civil Rights Activities—A General Statement*

We at LEAA view as a major priority the implementation of a comprehensive program to enforce the civil rights obligations of recipients of LEAA federal assistance. We further view the civil rights programs and initiatives undertaken by LEAA thus far as having significant impact on the quality of law and justice in America. Those initiatives are discussed in this Statement of Reasons:

In my statement of September 9, 1974, I said:

> "In taking the oath of office I have sworn to defend the United States Constitution and to see that the nation's laws are faithfully executed. And so I shall."

I also said that LEAA "will insist upon full state and local compliance with the applicable civil rights and equal employment opportunity program statutes."

In a Nation in which there are many thousands of criminal justice agencies, it is important to issue regulations and guidelines that will let the agencies know what is required of them in effecting civil rights compliance. In a series of issuances, LEAA has stated such requirements to the agencies.

LEAA has consistently sought to formulate and implement programs aimed at uniform adherence to the compliance requirements of the LEAA program and to maximize the utilization of resources available at the State and local level in addressing these responsibilities.

On New Year's Eve 1970, the Department of Justice issued regulations based on the 14th amendment to the U.S. Constitution prohibiting discrimination in the employment practices of recipients of LEAA funds. Originally prohibiting discrimination on the grounds of race, color, creed, or national origin, these equal employment opportunity regulations were amended on August 9, 1972, to include a prohibition of discrimination because of sex. See 28 C.F.R. §42.201, *et seq.*, Subpart D.

These regulations imposed equal employment opportunity standards on employers in the public sector at the State and local level well over a year before Title VII of the Civil Rights Act of 1964 was amended to prohibit discrimination by such employers.

On March 9, 1973, LEAA promulgated Equal Employment Opportunity Guidelines which require validation of minimum height requirements imposed by criminal justice agencies where they are shown to have an adverse impact on certain minority groups and women. Attachment 1, pp. 116–117.

On August 31, 1973, LEAA published its amended Equal Employment Opportunity Program Guidelines, 28 C.F.R. §42.301 *et seq.*, Subpart E, (first issued March 9, 1973) which require that all recipient agencies which have received at least $25,000 in grants, have fifty or more em-

ployees and have a service population with a minority representation of 3 percent or more are required to formulate, implement, and maintain an Equal Employment Opportunity Pogram (EEOP), relating to employment practices affecting minority persons and women, in accordance with the Guidelines. Attachment 1, pp. 9–14.

These regulations provided the first nationwide affirmative action mechanism for the benefit of minorities and women in public sector employment at the State and local level.

In June 1974, LEAA published a brochure entitled "LEAA and Civil Rights" which was broadly distributed throughout the criminal justice system. Attachment 2.

On July 19, 1974, LEAA published an Instruction entitled Equal Employment Opportunity—Goals and Timetables under Section 518(c) of the Crime Control Act of 1973, with regard to appropriate utilization of goals and timetables to overcome the effects of past discrimination. Attachment 1, pp. 162–174.

All of these regulations and guidelines were collected together, along with other materials germane to federal civil rights law in an Equal Employment Opportunity Program Development Manual. The Manual also describes in detail an appropriate methodology of preparing the Equal Employment Opportunity Programs required by the LEAA Guidelines, supra, Attachment 1. These manuals have been printed and distributed broadly by LEAA to the criminal justice community, civil and human rights agencies, and others having an interest in the implementation of compliance responsibilities incident to the LEAA program. The United States Government Printing Office is now also supplying these manuals.

On September 5, 1974, LEAA published a Guideline regarding the representation of minorities and women on supervisory boards of criminal justice State planning agencies and regional planning units. The failure of the appointing authority to select otherwise qualified minorities and women to serve on these boards may constitute a violation of Ti-

tle VI of the Civil Rights Act of 1964 and Section 518(c) of the Crime Control Act of 1973. Attachment 3.

In furtherance of LEAA's commitment to civil rights compliance, I convened a policy development seminar among people inside and outside of government on February 10 and 11, 1975. Some 40 experts in the area of civil rights, affirmative action and criminal justice were invited to Meadowbrook Hall, Rochester, Michigan to make presentations and discuss ways of improving the compliance program. The seminar considered problems relating to discrimination against women in police service; the impact of pre-selection testing of police officer candidates on minority and female applicants; and the relative efficacy of judicial and administrative proceedings in civil rights cases. I was in attendance during the entire conference. Discussions were spirited, free-wheeling and informative.

In accordance with the goal of improving LEAA's compliance program and as a direct result of the discussion and recommendations of the Meadowbrook Hall Conference, the Office of Civil rights Compliance (OCRC) of LEAA prepared a draft Master Plan and Statement of Priorities. This Plan seeks to examine the principal problems encountered by LEAA in the implementation of its compliance program. It suggests ways in which the compliance program may be strengthened, given a better identification and utilization of resources available at the Federal, State and local level to approach the enforcement of civil rights compliance obligations of LEAA's criminal justice constituency.

A first draft was circulated within LEAA and the Department of Justice. A second draft was circulated inside *and* outside of the government on July 3, 1975. Among those who received copies of the Master Plan and commented were the participants in the Conference on Black Citizens and Criminal Justice with whom I have had considerable contact. Mr. E. Richard Larson, one of the attorneys for plaintiffs in this action, also commented on the draft. By letter of September 4, 1975, to Herbert C. Rice (Attachment 4), Mr. Larson stated, in part:

"I enjoyed reading your Master Plan for Civil Rights

Compliance. I agree with most of it, but I kept wondering why it has taken four years."*

The Master Plan will be issued in final in February 1976.

One immediate outgrowth of the preparation and issuance of the Master Plan is that LEAA has issued proposed regulations which will implement Section 518(c) of the Crime Control Act of 1973, and Section 262 of the Juvenile Justice and Delinquency Prevention Act of 1974. Attachment 5.

Based on the recommendations of black leaders in the criminal justice field, I authorized the position of Special Assistant to the Administrator on Women and Minority Rights. The position is located on my immediate staff and the Special Assistant (GS-15 level) directs, provides leadership and coordinates the efforts of LEAA and its staff in the area of minority and women's rights and in this capacity serves as my confidential consultant. The Special Assistant serves as my personal representative in consultation with various State and national groups and provides guidance and advice on the development of pertinent programs applicable to civil rights statutes, rules and regulations for law enforcement programs, grants and contracts. I have chosen an extremely qualified individual, Mr. Lewis Taylor, for the position, and he was brought on board December 22, 1975. Mr. Reynaldo P. Maduro, Director of the Executive Secretariat, and former Executive Director of the Cabinet Committee on Opportunities for Spanish-Speaking People, served as Acting Special Assistant for a period prior to Mr. Taylor's appointment.

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*[Footnote added.] The Crime Control Act of 1973, which contains Section 518(c) and Section 509, was enacted August 6, 1973, two years before Mr. Larson's letter, not four. LEAA's initiatives and activities in the area of civil rights compliance began long before the issuance of the master plan. See, e.g., the listing of issuances above at page 9 ff, the discussion below at pages 23 ff, and the Appendices to this Statement of Reasons. The master plan and statement of priorities reflects the lessons of experience as well as comment at the Meadowbrook Conference.

On February 18, 1975, LEAA sponsored a conference at my direction with numerous prominent blacks in the criminal justice area and those blacks with an interest in the criminal justice area. Also in attendance for part of the conference was Edward H. Levi, Attorney General of the United States. The purpose was to assure that the policy and program directions of LEAA most accurately reflected the relevant needs and concerns of black citizens that come in contact with the criminal justice system. A steering committee was established by the participants of the conference which met through May. I met with the committee on May 16, 1975, and a number of recommendations were discussed. I received a letter from Lee P. Brown, Coordinator of the Steering Committee, which outlined the items discussed by the committee and stated that:

> "On behalf of the Steering Committee on Blacks and the Criminal Justice System, I thank you for the personal interest you have taken in the problems of Blacks and Criminal Justice. We are encouraged by your efforts in this area.
>
> "Also, the members of the Steering Committee felt that the meeting with you on May 16, 1975, was very productive.
>
> "We feel that your response to our suggestions and recommendations made the time we have been devoting to this concern well worthwhile. Hopefully, by working together, we will achieve results that will benefit all citizens."

In a letter dated July 28, 1975, I informed Mr. Brown of the status of the recommendations that the Steering Committee had made. I expressed my support of a ten to fifteen member committee as an advisory body to LEAA relative to minority issues. I stated that I would give serious consideration to the nominees submitted by the Steering Committee but that I have the option to consider other appropriate nominees to insure broad minority representation. The actual coordination and establishment of the advisory committee is one of the functions of my new Special Assistant.

Due to LEAA's involvement in the civil rights area, I was invited to the White House, along with Deputy Administrator Charles Work and Office of Civil Rights Compliance director Herbert Rice, on April 15, 1975, to meet with 75 black leaders from across the Nation to discuss law enforcement problems relating directly to blacks. Those black leaders in attendance included several black law enforcement officials, attorneys, judges, and officials of civic and service organizations. A strong and effective civil rights compliance program was enunciated as an important LEAA priority to help insure total community involvement.

At that meeting I said: "Citizens are insisting on equal treatment before the law, they are demanding that constitutional and governmental guarantees be applied evenhandedly." I went on to say:

> "For blacks, that means getting the same treatment afforded to whites when they come into contact with law enforcement and criminal justice. This is not isolated to those instances when an individual is touched by the criminal justice system as a victim, offender, witness, or juror, but also when he or she seeks a professional role in the system. How both blacks and whites are treated in these two aspects is a measure of our society's progress and goes to the heart of criminal justice.
>
> "It would appear that discrimination which channels minority youths into a secondary labor market can also prod them into criminal acts or other illicit activities. Vigorous measures to eliminate such discrimination and reduce economic deprivation is justified by fairness alone. A special urgency is added when one considers that such measures can help the community by reducing crime."

While OCRC is the principal arm for the enforcement of LEAA's civil rights responsibility, compliance activity is also performed by the Office of Inspector General of LEAA in the performance of routine audits of grantees to ensure compliance with the Crime Control Act and other appropriate legislation.

Basically, the Office of Inspector General is concerned with auditing at the State planning agency level. However, in the conduct of a routine audit it does randomly select various subgrantees for examination. In the past, there have included a number of local police departments. Due to the complexity of civil rights laws and requirements, the Office of Inspector General has recently adopted a policy of referring findings of non-compliance to OCRC for action. A noteworthy example of the coordinated effort occurred recently with the Detroit Police Department. The Office of Inspector General discovered in an audit of the Michigan State planning agency that the Detroit Police Department's EEOP was not in compliance with LEAA guidelines. This finding was communicated to me on June 19, 1975. I sent a letter to Chief Philip Tannian of the Detroit Police Department on July 1, 1975, indicating that this matter would be referred to OCRCm The matter was referred on July 7, 1975, and on August 4 and 5, 1975, two representatives of OCRC went to Detroit and met with police officers and representatives of the Special Projects Section of the Detroit Police Department. The Department's EEOP was analyzed and recommendations were set forth in correspondence dated August 26, 1975, from Mr. Rice to Chief Tannian. The Department submitted a revised EEOP on January 6, 1976, and it is currently undergoing evaluation.

OCRC has collaborated with the Office of Inspector General in the revision of their Audit Manual to help the Office of Inspector General in the audit of civil rights matters. Issuance of that manual is expected shortly.

III. *LEAA's Civil Rights Activities—A Further Statement*

A. *Preface*

In the preceding part of this Statement of Reasons, I have tried to make plain and unmistakable LEAA's commitment to effect civil rights compliance in criminal justice agencies.

I trust that it will not be miscontrued when I say that, in

carrying out that commitment, LEAA must deal with what is realistic and what is practicable.

For example, LEAA must recognize that it cannot singlehandedly do a job that is addressed jointly by many agencies in civil rights enforcement activities affecting State and local criminal justice agencies in the United States. Thus, LEAA cannot supersede the Equal Employment Opportunity Commission, the Civil Rights Division of the Department of Justice, or the activities of private litigants and State and local civil rights agencies. While LEAA is fully committed to a comprehensive compliance program, it cannot replace all the other apparatus in this Nation which seeks to assure that full civil rights are achieved within the American system.

A notable example of a coordinated effort initiated by LEAA which resulted in very complete and comprehensive relief occurred with the Chicago Police Department. In June 1971, a formal complaint was filed with LEAA alleging that the Chicago Police Department engaged in discriminatory hiring practices and techniques, methods of promotion, disciplinary procedures and assignments within the department. After a lengthly investigation, a comprehensive report was issued which indicated that the complaint had merit. LEAA informed the Chicago Police Department that it appeared to be engaging in unlawful discriminatory employment practices.

LEAA engaged in extensive discussions with the City of Chicago in the hopes of voluntarily resolving the problems. In the Spring of 1973 when it appeared that a voluntary settlement could not be arrived at, LEAA referred the matter to the Civil Rights Division of the Department of Justice. In August 1973, a lawsuit was initiated which ultimately resulted in a finding by the U.S. District Court in Chicago on January 5, 1976, that the city of Chicago "knowingly discriminated against women, blacks and Hispanics in the employment of police officers." *Unites States* v. *City of Chicago, et al.*, ___ F.Supp. ___ (N.D. Illinois, Jan. 6, 1976)—No. 73C2080.

The lawsuit led to the withholding of all general revenue sharing funding to the City of Chicago until the City comes into civil rights compliance. On December 18, 1974, the District Court for the District of Columbia in *Robinson* v. *Shultz*, Civil Action No. 74-248, first enjoined payment to the City of Chicago because of the police department's discriminatory practices.

The order of the court included a requirement that of the next 600 police officers employed, 300 be blacks and Hispanic males and 100 be females. This was a figure previously agreed to by the parties but not yet carried out. Thereafter the court concluded that a hiring standard of 42 percent black and Spanish surname males and 16 percent females should be imposed until further order of the court. A promotion standard of 40 percent for black and Spanish surname males was granted and the United States' request for back pay to those who were injured by the City's discriminatory hiring and promotion practices.

In this connection it should be noted that, according to the Criminal Justice Directory Survey conducted in 1970, and updated in the interim, the February 1975 publication of LEAA's National Criminal Justice Information and Statistics Service there are a total of 57,575 State and local criminal justice agencies in the United States. Of these, 20,158 are police-type agencies broken out as follows:

17,464—General purpose police
987—Special police
1,707—Coroners/medical examiners

All of the other kinds of criminal justice agencies—principally courts and corrections facilities—totalling 37,417 are eligible for LEAA funding. A sizeable number of these agencies are LEAA recipients.

In recognition of the practical limitations on investigating every possible violation by every recipient criminal justice agency, LEAA has continually increased its monitoring of the civil rights responsibilities of recipient agencies through training, technical assistance and programmatic requirements designed to educate, assist and require a self-evaluation by these agencies. The question is not *whether*

to effect civil rights compliance, but *how* to *best* accomplish it. On this question, LEAA has been open and continues to be open to suggestion.

A concrete example relates to the complaint affecting the 19 California city police departments. (Dealt with in more detail in the Appendix.) For LEAA to have fully investigated the complaint regarding all 19 cities in California, there would have been, as a realistic matter, little or no staff to handle other compliance needs. Accordingly, LEAA arranged with the complainants' representatives to investigate only three of those cities.

B. *The Office of Civil Rights Compliance*

An Office of Civil Rights Compliance has been established within LEAA and has primary authority to see to it that recipients of LEAA funds comply with applicable civil rights statutes, orders, rules and regulations. The authority of this office to address problems of discrimination was expanded with the 1973 Amendments to the Crime Control Act which included Section 518(c) providing that:

> "No person in any State shall on the ground of race, color, national origin, or sex be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title."

OCRC was created in May of 1971. Prior to that time civil rights questions were handled by one attorney in the Office of General Counsel.

During FY 1972 (July 1, 1971—June 30, 1972) OCRC acquired a staff of six professionals and two clericals. During FY 1973 the staff increased to nine professionals and three clericals. During FY 1974 OCRC increased to twelve professionals and three clericals, and during FY 1975 the staff increased to sixteen professionals and three clericals. This same number of full-time permanent positions will continue through FY 1976 because there are no monies whatsoever in LEAA's appropriation for FY 1976 for any new positions in any part of LEAA.

However, OCRC has been given eleven temporary posi-

tions for staff support. These include two full-time clericals, two part-time "stay-in-school," one full-time staff aide, one part-time clerical, two part-time law students, one program assistant, one part-time expert, and one special assistant. Three new temporary positions for investigations are being filled at the present time.

In accordance with the statutes and regulations that provide for LEAA's civil rights responsibilities (see Manual, Attachment 1), OCRC works toward the goal that equal employment opportunity is practiced by LEAA recipients, subgrantees and contractors and that services are equitably provided by those police agencies, court systems, correctional agencies and other criminal justice agencies which receive LEAA assistance. OCRC works with criminal justice operational and planning agencies in four basic areas: the conduct of civil rights compliance reviews and audits; resolving complaints of discrimination; monitoring of the employment practices of contractors in Federally-assisted construction; and supporting technical assistance and other programs to improve employment practices and community service practices of recipient agencies.

At all times germane to the allegations of the present complaint, OCRC was organized into three principal line operations:

(1) A *Complaints Division*, which is responsible for investigation and prosecution of efforts to informally resolve complaints of discrimination lodged with LEAA and involving recipients of LEAA funds;

(2) A *Compliance Review Division*, which is responsible for the conduct of pre-award and post-award compliance reviews of the personnel and operational practices of recipients of LEAA funds, including efforts at informal resolution of compliance problems uncovered as a result of such reviews;

(3) A *Contract Compliance Division*, which is responsible for assuring the compliance of recipients of LEAA funds utilized in the construction or renovation of facilities with the provisions of Executive Orders 11246 and 11375. This Division conducts audits and on-site compliance re-

views, as well as collecting forms and data showing the location, extent of completion, and relative utilization of minority and female labor on such projects.

1. *Conduct of Compliance Reviews*

Since early 1972, OCRC has conducted compliance reviews of major law enforcement agencies and several State correctional agencies and institutions. Extensive reviews of State and municipal law enforcement bodies, probation and parole agencies, prison and detention facilities and juvenile court systems are planned for the future. To date, 19 criminal justice agencies have been reviewed.

OCRC has analyzed numerous police agencies in terms of: LEAA funding; minority persons presently employed by agency; minority population of the State, county or city served by the agency; existing complaints received by LEAA, the Equal Employment Opportunity Commission or the Civil Rights Division of the Department of Justice; and pending related civil suits. Priorities for scheduling compliance reviews have been developed on the basis of these factors, with preference being given to those departments with the highest funding and the greatest disparity between minority employment and minority percentage of the service population.

Compliance reviews runs one to two weeks and are concerned with both equal employment and program services. The areas examined are: recruiting, qualifications and tests, promotions and assignments, utilization of minority and female employees, disciplinary procedures, handling of citizens' complaints and community services. Community services can include the types of arrest by race, the number of arrests by race, location of equipment and personnel by neighborhood, response time to service calls from identifiable minority areas as compared to non-minority areas, and police handling juveniles by race and sex. The review team does extensive interviewing of community interest groups—particularly in minority areas of the community—to determine the community perception of the police department and the services which it provides.

Reviews of State and local corrections systems focus on equal employment opportunity and on equality of services to those individuals under the supervision of correctional authorities in institutional settings as well as community programs. Examples of areas studied during the review process include disciplinary proceedings and actions within adult and juvenile institutions, classification systems, equal access by both sexes and all ethnic groups to employment and education programs offered by corrections agencies, parole hearings and assignments to specialized treatment programs such as halfway houses and group homes. The review team interviews staff, clients and prisoner advocate groups to learn how each group perceives the civil rights compliance posture of the agency or facility. A full-scale compliance review of the Virginia State Department of Corrections was undertaken in FY 1975. The review involved a complete evaluation of the entire Department's hiring practices and a study of its services delivery mechanisms for juvenile offenders.

Recommendations were made for improvements in the Department's hiring practices regarding minorities and females for both corrections and administrative staff. Recommendations for the adult system were forwarded to the Governor of the State on December 16, 1975.

The review was large in scope, encompassing a full two-week period.

In July 1975 OCRC received a complaint alleging discriminatory employment practices against the New York Police Department, the largest in the country. To investigate these allegations we have scheduled an on-site compliance review.

2. *Equal Employment Opportunity Program Audit Program*

The Compliance Review Division in December 1974 initiated a program of conducting desk audits of the EEOP's of selected LEAA recipients. LEAA regulations require an EEOP as a condition of new and continued funding of all recipients receiving more than $25,000 with minority popula-

tions greater than 3 percent and who employ fifty or more persons (28 C.F.R. 42.301 *et seq.*, Subpart E). Where the minority population is less than 3 percent, the agency must still prepare an EEOP relating to women.

Since the initiation of the program, numerous State planning agencies have voluntarily submitted recipient's EEOP's to OCRC for audit. Occasionally, an SPA or OCRC stops the drawdown of new grant awards until complete EEOP's are received. The California State planning agency has submitted over 20 EEOP's for OCRC's review. Under this program, the Compliance Review Division conducted or is conducting desk audits of 33 criminal justice agencies.

3. *Survey*

OCRC in FY 1975 conducted a sworn force employment survey of the 16 law enforcement agencies it has conducted on-site reviews of since 1972. This survey discovered that since the time of review the number of black officers on all of these departments has gone from 1,821 (8.2 percent of the total officers on these departments) to 2,290 (9.9 percent of the total officers), an increase of over 25 percent. The number of Hispanic officers has increased from 362 (1.6 percent of the total officers on these departments) to 533 (2.4 percent of the total officers) for an increase of over 50 percent. Female sworn officers have gone from 255 (1.1 percent of total officers) to 584 (2.5 percent of total officers) for an increase of over 125 percent. The total overall sworn force size of these 16 departments has gone from 22,177 to 23,061 for an increase of 4 percent.

4. *Pre-Award Compliance Review Program*

The Compliance Review Division routinely conducts compliance reviews of all discretionary grants awarded by LEAA amounting to $750,000 or above. The dollar amount, however, will change when the proposed OCRC Master Plan is finalized. At that time, OCRC will have discretion to review all DF applications of $500,000 or more. It is estimated that this will result in substantially increasing the number of pre-award reviews to be conducted.

In pre-award reviews, the measures of compliance are:

(a) non-discriminatory employment procedures; and

(b) non-discriminatory delivery of services, i.e., are the various groups which make up the eligible service population to be equally served and, if not, is there a valid justification for any significant disparities?

Since this program was initiated in October 1973, it has taken the vast majority of the Compliance Review Division's resources, i.e., over 70 percent of available person hours. The time required to conduct a pre-award compliance review, including the period at which the application is received through on-site review and drafting of special conditions, averages 21 person hours each application.

In FY 1975, OCRC undertook initial investigation of 41 pre-award compliance reviews. Of that number, 17.1 percent (7) resulted in on-site reviews, while another 15 percent (6) were conducted through desk audits of EEOP's. Of the 28 remaining, approximately 90 percent of these applications were rejected for funding. The other 10 percent would include applications which were withdrawn or which fell below the $750,000 cut-off figure.

Of the pre-awards culminating in either desk audits or on-site reviews, 92.3 percent (12) resulted in special conditions to the instrument of grant.

5. *Compliance in Federally-Assisted Construction Contracts*

Executive Orders 11246 and 11375 prohibit discrimination based on race, creed, color, national origin or sex by Federal contractors and subcontractors and place upon the Secretary of Labor the responsibility for their implementation. The Secretary in turn has delegated to the Office of Federal Contracts Compliance (OFCC) of the Department of Labor the authority to adopt rules and regulations necessary to implement the Orders and to monitor and supervise the activities of all Federal agencies in this area. Accordinglyn the OCRC coordinates with the OFCC in meeting LEAA's responsibilities for monitoring the equal employment practices of contractors awarded contracts for con-

struction or renovation of facilities with LEAA financial assistance. Guideline G 7400.1A, issued February 1973, and Guideline G 7400.1B, issued June 4, 1974, advised the State planning agencies that they are the primary source of information on construction projects.

Upon approval of a grant application for LEAA funding exceeding $10,000, the State planning agency must provide OCRC with identifying information on the forthcoming project. OCRC will then provide the identified contractor with monthly reporting forms that detail the utilization of minority and female employment on the project by trade, person-hours and numbers of minority, female and total employees.

Affirmative action plans are required of all contractors and subcontractors awarded Federally-assisted contracts of $50,000 or more and who employ 50 or more persons. Such plans include consideration of recruitment, promotions, transfer, lay-offs or terminations, rates of pay and selection for training, including apprenticeship. Plans must include numerical goals and timetables for the achievement of full and equal employment opportunity for minorities and women, where Federally-assisted contractors have personnel practices that are deficient as they affect persons in either of those categories.

Construction project information is analyzed by both LEAA and OFCC—particularly regarding those LEAA-funded projects in communities that have Hometown or Imposed Plans. LEAA Contract Compliance staff have participated regularly in OFCC construction compliance reviews and audits in communities with Hometown or Imposed Plans. These reviews consist of pre-bid and pre-construction conferences, of on-site visits, and of evaluation of reports submitted by the contractor. Additionally, LEAA Contract Compliance staff conduct pre-bid conferences on contracts, as deemed necessary. As of August 1975, the Contract Compliance Division, OCRC, is monitoring 17 construction projects in Plan Areas which represents over $33 million in Federal funds. This represents

more than half of the construction money provided by LEAA in FY 1973, FY 1974 and FY 1975.

6. *Resolution of Complaints*

As evidenced by the foregoing discussion, OCRC conducts a number of other vitally important civil rights functions in addition to the important task of resolving complaints. However, complaint resolution has assumed a prominent position in the responsibilities of OCRC.

Any person who has a complaint of discrimination based on race, color, national origin, creed or sex in the personnel practices of an agency receiving LEAA funds, or in the provision of program services by such an agency, may notify OCRC, or the relevant State planning agency, which will forward a copy of the complaint to OCRC.

Upon receiving the complaint, OCRC examines the charge to determine if the allegations indicate discrimination prohibited by civil rights laws and regulations applicable to LEAA and if the agency being complained about is an LEAA recipient. If OCRC determines that it has jurisdiction, the individual filing the complaint and the SPA are informed that the complaint is being processed. If a complaint appears valid but falls under the jurisdiction of another unit of the Federal government, LEAA refers it to that unit.

The respondent agency is then informed of the charges and is directed to respond to an interrogatory letter requesting data and information relative to the issues raised by the complaint. When the requested information has been received and analyzed, an on-site investigation is scheduled unless the matter can be settled on the basis of information received by mail.

OCRC is currently formalizing its referral relationship with several EEOC District Offices and has promulgated new guidelines that would give those State planning agencies that have the interest and capacity to engage in civil rights compliance activities the opportunity to do so. OCRC will retain substantial oversight over the State planning agency's conduct of these activities. These guidelines became effective January 21, 1976.

The OCRC complaint desk caseload, as of January 21, 1976, is as follows:

	Fiscal Years				Totals
	FY 1973	1974	1975	1976	(incl. FY 1972)
*Active Cases	18	50	112	90	276
**In-Active Cases (Open)	17	29	6	0	54
Cases Closed	29	22	12	0	97
Totals Rec'd Per FY	64	101	130	90	427

It is estimated that approximately 200 complaints will be docketed in FY 1976.

The 427 complaints which have been received by LEAA are broken out into the following criminal justice agency categories:

296—Police Departments
21—Sheriffs' Departments
52—Corrections and Prisons
10—Courts
11—Universities (these are referred to DHEW under a delegation of authority)
4—Probation and Parole
4—Juvenile Detention Centers
12—Various Miscellaneous Criminal Justice Agencies
21—State Planning Agencies

Note: There may be more than one complaint against an individual agency. These are total complaints, by category.

*This was prior to the 1973 amendment to Section 518 of the Crime Control Act of 1973 which added Section 518(c).

*OCRC is presently undergoing reorganization along functional lines. Notwithstanding formal divisions, personnel will continue to be assigned to meet specific needs.

*Includes cases where OCRC is monitoring litigation.

**Being monitored for compliance with agreements.

7. *Technical Assistance Grants and Contracts*

LEAA is implementing a comprehensive program of civil rights enforcement and activities involving the fullest use of resources at the State and local levels. Accordingly, it is developing a technical assistance capability at the Federal level which will be shared with State officials as each State begins to develop a comprehensive compliance program.

LEAA has funded a number of technical assistance grants and contracts in the civil rights area. A brief description of the most significant grants follows.

The first grant awarded to strengthen the civil rights capabilities of State planning agencies and criminal justice agencies established the *Center for Criminal Justice Agency Organization and Minority Employment Opportunity* at Marquette University. The main function of the Center is to recruit and retain minority personnel and women. The Center through its full-time staff and consultants has provided assistance to 87 law enforcement agencies during the past calendar year. To broaden and apply its expertise, the Center is currently researching:

—The extent of minority employment by police agencies;

—The minority recruitment drives of major police departments and the reasons for their success or failure;

—The extent of discrimination in police forces as a factor hindering recruitment and retention of minorities;

—Methods of improving the police image in minority communities;

—Police employment standards and employment testing as they affect the recruitment of minorities for law enforcement work.

In addition, the Center is currently providing long-range technical assistance to several police departments, and the Center is also holding workshops in numerous cities to develop an awareness among those who should be concerned with structuring solutions to the problem.

The civil rights contract with the National Urban League, creating the *Law Enforcement Minority Manpower Project* (LEMMP), has been renewed for a third consecutive year of operation. LEMMP conducted successful programs during FY 1973 in three cities (Cleveland, Ohio; Dallas, Texas; and Newark, New Jersey) and in three different cities (Springfield, Massachusetts; Sacramento, California; and Little Rock, Arkansas) during FY 1974. LEMMP currently (FY 1975) has minority recruitment programs at four new locations (Lexington, Kentucky; Jackson, Mississippi; Topeka, Kansas; and White Plains, New York). The scope of LEMMP has been expanded to impact counties and entire States, and there is greater emphasis placed on recruiting Hispanics and American Indians. During the first three years of LEMMP, 11,600 minority prospects were interviewed and 4,000 were hired by criminal justice agencies.

A contract was awarded to the *International Association of Official Human Rights Agencies* (IAOHRA) to train members and staffs of State planning agencies, local criminal justice planning agencies and State and local human rights agencies in matters relating to civil rights compliance in the criminal justice community. At this writing the Association has trained 4,670 individuals and has visited 122 State or local criminal justice agencies.

During 1975, IAOHRA provided training to State planning agencies and criminal justice agency EEO personnel in the ten LEAA regions. This training focused on new LEAA regulations affecting recipient civil rights compliance responsibilities and LEAA requirements for the development and implementation of EEOP's in LEAA-funded criminal justice agencies.

A grant was awarded last year to the *Hispanic Law Enforcement Training Institute of Justice*. Its activities were aimed toward improving the relationship between the Hispanic community and criminal justice systems by recruiting, counseling and training men and women of Hispanic origin interested in law enforcement careers. The geographic focus of its work has been in the New York metropolitan area.

The project has serviced over 2,000 persons to date. It is hoped that the pending evaluation will show the program to have been highly successful and serve as a valuable model for replication in other areas of the country where there are large concentrations of Hispanic people.

The project's activities in New York have now been phased out. New York City, which was the laboratory for the project's work, has ceased hiring and is likely to place police officers on payless furloughs. Under these circumstances, it was determined that it would be unlikely that the project could carry on with its work.

LEAA has funded a project of national scope to improve the methods of selection for employment of law enforcement personnel. This grant, involving industrial psychological testing, has been awarded to the University of Chicago's *Industrial Relations Center*.

The grant has as its objective the development of a test instrument for selection of municipal police officers in departments ranging in size from approximately 700 officers to 7,000 officers. Also, a similar test instrument will be developed for use by State highway patrols and State police agencies. Another objective of this grant is to develop new test items which can be shown to be job-related, and have at the same time, a minimum adverse impact on minority applicants. This project is budgeted on a three-year basis, but funded one year at a time. Funding in subsequent years, if available, will aim at concurrent and predictive validation of the test instruments involving all areas of the country.

LEAA awarded a grant for $125,000 to the *City of Cleveland* for the benefit of the *Police Department*. This grant, the first of its kind funded by LEAA, is for the development of job-related promotional examinations which have no significant adverse racial or sexual impact. The grant also funds development of non-discriminatory entrance level screening procedures such as background investigations and polygraph tests. Finally, the grant calls for development of training curricula for each rank of the police department, which training is job-related and not

limited to members of a particular race or sex. A replication document will be prepared as part of the grant which will enable other departments to benefit from the research done in Cleveland.

8. *Negotiation and Enforcement*

The primary purpose of civil rights law is to establish equal opportunity, not to withhold Federal assistance. LEAA is firmly committed to the principle that the initial step in the resolution of civil rights compliance problems must be a serious attempt to achieve a voluntary settlement. This is the philosophy underlying the conduct and follow-up of compliance reviews and the processing of complaints by LEAA. Thus, after an investigation, OCRC meets with the individual and criminal justice agency to discuss resolution of the matter and make recommendations for eliminating possible discriminatory practices. We have found the process of negotiation an efficacious means of achieving voluntary compliance with LEAA recommendations. After the recommendations have been implemented, OCRC periodically monitors the results and makes certain that the agency abides by the terms of the agreement.*

On August 26, 1975, I sent a letter to the Governor of Hawaii advising him that the Honolulu Police Department was not in compliance with Federal civil rights requirements and that lack of resolution would result in appropriate enforcement proceedings. Subsequently, the Honolulu Police Department deleted its minimum height requirements.

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*Contrary to the allegations (par. 25) of plaintiff's complaint, an employment discrimination case was not filed by the Department of Justice against the South Carolina Highway Patrol. The Attorney General of the United States has authorized the Civil Rights Division to file suit in this case. However, I sent a letter to the Governor of South Carolina on January 16, 1976, notifying him of the non-compliance and that voluntary efforts have failed to resolve the situation. The Governor was given until March 1, 1976, to try to effect a voluntary settlement. No suit will be filed by the Civil Rights Division during this time.

In February 1975 I was made aware of a non-compliance matter involving the Police Department of St. Louis in which I was prepared to take enforcement action. In that matter, officials in St. Louis, upon learning that they faced the prospect of such action by LEAA, voluntarily complied, obviating the necessity of taking enforcement action.

On January 29, 1976, I sent a letter to the Governor of Pennsylvania, advising him of the non-compliance of the Philadelphia Police Department, and requesting his assistance in securing their compliance. If the Governor cannot secure compliance by March 29, 1976, LEAA will initiate fund-termination proceedings pursuant to Section 509 of the Crime Control Act.

Since 1974, when EEOP desk audits were begun, we have deferred drawdown of funds on new awards to 21 criminal justice agencies which had incomplete EEOP's. Complete EEOP's are a prerequisite to funding.

In mid-January 1975, I was apprised of the fact that the cities of Pittsburgh and McKeesport had failed to complete an EEOP covering the local Police Departments as required. Cornelius M. Cooper, Regional Administrator of LEAA, located in Philadelphia, wrote to John Snavely, the Executive Director of the Pennsylvania State planning agency, on January 24, 1975, directing the State planning agency not to award any further subgrants to those cities until compliance with the EEO Guidelines was achieved. The action was done with my knowledge and full support. The cities of McKeesport and Pittsburgh have now submitted satisfactory EEOP's.

When the Administration of LEAA determines, on the basis of information and recommendations from OCRC and the Office of General Counsel, that voluntary compliance cannot be achieved, it must then resort to the appropriate enforcement mechanism.

If the area in which non-compliance has been found falls within Section 518(c) of the Act, the chief executive of the State in which the non-compliance exists is notified and requested to intervene and secure compliance. If within a reasonable period of time after notification the chief execu-

tive is unable or unwilling to resolve the situation to LEAA's satisfaction, administrative proceedings for fund cut-off must be initiated. If the Administration, after reasonable notice and opportunity for a hearing finds that there has been a failure to comply with Section 518(c), it may suspend all funding to those areas or activities where the finding of non-compliance was made. A recipient may request a rehearing, and further provision is made for judicial review of the Administration's decision. Concurrent with administrative proceedings, LEAA may pursue appropriate judicial actions as provided by law, if it so chooses.

Judicial and administrative sanctions are also provided under Title VI of the Civil Rights Act of 1964 and the LEAA Equal Employment Opportunity Regulations.

IV. *Methods—Practical, Impractical, Appropriate and Inappropriate*

A. *Plaintiffs' Proposals*

In their prayers for relief in the Amended Complaint, plaintiffs propose various methods of seeking to effect civil rights compliance.

Thus, in the prayer for relief numbered D4, plaintiffs seek to require LEAA:

> "to award LEAA funding only to those departments which have been determined by the defendants to be in civil rights compliance and to place all pending LEAA funding in escrow until there has been a determination of civil rights compliance."

This seems to mean that LEAA should make no grant to any department until there has been a determination that the particular department is in civil rights compliance. This is inconsistent with the approach taken in the statute; it would be impractical; and it would result in a frustration of the purposes of the statute because of the indefinite delay in funding that would result.

A second proposal by plaintiffs is that, upon a judicial finding of discrimination, LEAA should immediately suspend and terminate funding. Prayer D1. This proposal can

be tested against a hypothetical case that has points of resemblance to that involving the Indiana State Police dealt with in the Appendix.

Let us take a case in which a complex factual stituation is the subject of litigation between a private party and a police agency. The private party is represented by an organization with expertise in this area and the resources and abilities to prosecute the case energetically. The case results in a lengthy judicial opinion which takes a few months for the court to prepare. The court's findings agree with some allegations and reject others. Rendering appropriate relief will take an additional period of time. To say that LEAA should jump into such a case in the middle is to counsel administrative action that is imprudent and unsound.

The reasons: LEAA resources would be diverted to a purpose that would be duplicative; LEAA would be injecting itself into a situation in which the court had made findings in the first instance, but LEAA would be unaware what remedy the court would deem appropriate for the violation it found. Considering the relationship that courts and agencies should have toward one another, such action by an agency—absent some strong special circumstance—would be presumptuous.

In this regard, it should be remembered that, under the Act, fund cut-off is coercive not punitive. There is no reason to presume that if a lower court orders relief and the order is not stayed, the police agency will violate it. If an order is issued and obeyed, it is difficult to find the warrant for instituting fund cut-off proceedings.

On the other hand, if the order should be stayed, there would be, at a minimum, a presumption against initiating fund cut-off. For, if a court exercises its discretion to make the remedy await appellate action, the court might be justly displeased if LEAA were to insist on action in advance of appellate review.

To put the matter another way: Assuming that a court finds discrimination, there is not a magic wand that can be waved that can immediately eliminate discrimination. The

court must determine the appropriate relief and the practicable pace of relief to eliminate discrimination. This is the task of LEAA where it negotiates with a department or makes a determination of discrimination. But ordinarily it is not appropriately the role of LEAA where the court had adjudicated the case and has the discretion to set appropriate terms of relief.

Plaintiffs would have LEAA immediately terminate funding to law enforcement agencies which have been judicially determined to be in violation of civil rights laws. However, Section 518(c) provides that the Administration, after determining a failure to comply, must afford the chief executive of the State a reasonable time to secure compliance. Plaintiffs' proposal that LEAA immediately suspend and terminate funding to agencies judicially determined to be in violation of civil rights laws runs into at least the following obstacles:

First. It ignores LEAA's legal responsibility to seek the voluntary compliance of a recipient it believes to be in noncompliance.

Second. It assumes that the Administration can and should automatically make the same determination as a court.

Third. It reads the opportunity for an administrative hearing out of the statute.

Fourth. It reads the opportunity of the chief executive to secure compliance out of the statute.

Even if all that plaintiffs sought were for the Administrator to commence administrative proceedings immediately upon a judicial finding of violation, their proposal would be unsound. In order for the Administration to afford the chief executive the opportunity to secure compliance, LEAA would have to establish the appropriate remedy for the discrimination he determined to exist. If the court had not yet established a form of relief, the Administration would have to preempt the court by deciding what relief is appropriate. If the court had already established relief by means of an order, it is difficult to understand what purpose LEAA intervention at that stage would serve.

Thus, LEAA will ordinarily defer administrative action on a complaint when the same matter is pending in a court of law.* This pragmatic approach which takes advantage of the resources of the judiciary best serves the civil rights responsibility of LEAA. Discriminatory charges are being aired in a forum competent to decide the issue. LEAA can then draw on the findings and conclusions and proceed accordingly, obviating the necessity of expending its own resources on a matter already competently reviewed. LEAA can then direct its resources to matters that may not otherwise surface in a court of law but are equally deserving of attention. This is an acknowledgement of the fact that it is a practical impossibility for LEAA to promptly resolve every complaint it receives.

The deferral approach of LEAA was approvingly commented upon in *Hardy* v. *Leonard*, 377 F. Supp. 831 (N.D. Calif. 1974). Here, a class action by women who were denied employment with the Oakland Police Department was brought, seeking an order requiring LEAA to determine whether the police department was complying with Federal equal employment requirements, and terminating financial assistance to the department if it were not so complying. The action was dismissed as being moot. In dismissing, the court reasoned that:

> "Defendant's evidence is convincing that LEAA has now complied with its responsibility to monitor and work with the OPD to assure compliance with relevant statutes regarding employment discrimination. It appears to the satisfaction of the court that LEAA has engaged in compliance discussion with the OPD, and that it has seen to it that the OPD has complied with the recommendations. *While the height and weight requirements for employment with the OPD remain in controversy, LEAA is properly awaiting the decision*

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*It should be noted that I am *not* speaking here of a choice by LEAA to go to court rather than to take administrative action. When the Administration determines that a State or local government has failed to comply with Section 518(c)(1) or an applicable regulation, LEAA must notify the Governor in accordance with Section 518(c)(2).

on that question which should be forthcoming from the California Court of Appeals." (*Hardy* v. *Stumpf*, 37 Cal. App. 3rd 958, 112 Cal. Rptr. 739.)

In addition to conserving resources, the approach of deferring to a pending court action reduces the potential for conflicting court and agency results. Such results would promote confusion rather than the promotion of equal employment opportunity.

When an individual alleging discriminatory employment practices brings an action in court, there may be instances in which such action is accompanied by an administrative complaint with LEAA, and others in which it is not. Where it is not, it seems to me reasonable to assume that the individual has chosen that procedure for prosecution of his claim that he (or his counsel) deemed most appropriate.

Where the individual seeks to pursue both courses simultaneously, other considerations are relevant. As strongly as an individual feels a grievance, his claim is only a claim until authoritatively determined. Claims are made that are determined to be valid as well as invalid. Where there are not limitless resources in society to prosecute claims through various means simultaneously, it is reasonable ordinarily to defer action administratively where an individual pursues his judicial remedy.

Of course, if judicial proceedings are prolonged unduly, or if an agency violates a court order, a different situation may well be presented. There is no presumption, however, that a court will unduly delay disposition of a case, or that an agency will violate a court order.

Plaintiffs would also have LEAA initiate administrative proceedings while litigation initiated by a private party is pending and has not reached adjudication. Similar concerns are applicable here. With the number of law enforcement agencies in this country, and the number of civil rights activities needed to be conducted by LEAA, the duplication of effort that is involved in pursuing administratively matters being prosecuted judicially would be unsound and impractical administration. Even where the Civil Rights Divi-

sion has filed suit,* LEAA cannot automatically make a determination under Section 518(c) on the basis of allegations in a complaint filed by the Civil Rights Division. Similar questions of duplication of effort and intrusion upon the courts are presented as in the case of individual lawsuits.

It should also be considered that intrusion of LEAA into situations where a court of competent jurisdiction is considering a matter may in fact be counterproductive to the resolution of the problem in question. LEAA after all can only by administrative process seek a cut-off of funds. A court, on the other hand, commonly can afford broad individual or class relief in a case it is considering. For instance, it might order that a discriminatorily posted eligibility list be taken down or individuals unlawfully discharged, be reinstated. Administrative process may be effective to bring about compliance by a given recipient, particularly where significant amounts of LEAA funds are involved. But one cannot say, automatically, in all cases, that intrusion of LEAA's administrative processes into litigation testing the adequacy of a given agency's compliance posture would result in a more full or just resolution of a given matter. Employment discrimination cases are commonly extraordinarily complex to try, hearings commonly extending over many months, the court being required to examine volumes of testimony and to fashion interlocutory and final orders essential to do justice in an individual case. To require LEAA to pursue an administrative hearing in a case which is already being heard by a court of competent jurisdiction is ordinarily not only unsound but may result in confusing and conflicting testimony, conclusions and results.

LEAA must conduct its vital enforcement obligations in securing civil rights in such a way as to most effectively use the funds and people who are available. It is not merely negative thinking to acknowledge that LEAA cannot do it alone. There is a range of public and private remedies for eliminating discrimination. LEAA provides one of those remedies. But Congress did not provide private remedies

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*See footnote on page 41.

and enforcement machinery in the Civil Rights Division and in the Equal Employment Opportunity Commission so that LEAA will track and duplicate functions and specific cases being addressed elsewhere. Accordingly, it is sound administration that where reasonable and possible LEAA should utilize other resources to assist it in its functions.

B. *Additional Reflections*

In order to make maximum use of other resources, LEAA has adopted a plan under which it can use those State planning agencies willing and able to operate as a first line for investigation and resolution of discriminaton complaints. In addition, LEAA seeks to use State and local civil rights agencies, and EEOC District Offices, where possible.

LEAA must effectuate its civil rights obligations in a manner that poses the least threat to those compelling congressional concerns that were fundamental in the formulation of the Act. Premature fund termination threatens the effective operation of the local police units, jeopardizing the peace, security and welfare of the local population. LEAA must employ the flexibility to operate in a manner which most effectively accomplishes its civil rights responsibility and at the same time accommodates the mandate of LEAA to improve law enforcement and help control crime.

Fulfilling the promise and dream of the United States means eliminating discrimination and affording equal employment opportunity. We at LEAA are seeking to help fulfill that dream. We cannot, however, overlook the fact that Section 518(a) of the Crime Control Act of 1973 states:

> "Nothing contained in this title or other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement and criminal justice agency of any State or political subdivision thereof."

This subsection cannot be read alone, for to do so would delete LEAA's obligation to help erase discrimination. But all parts of a statute must be given meaning; and the respect

for State and local authority that produced Section 518(a) should also condition the administration of other parts of the Act. I emphasize strongly that this does not minimize the civil rights responsibilities of LEAA. Reiterating what I said at an earlier portion of this Statement (p. 8), we at LEAA view and have viewed as a major priority the implementation of a comprehensive program to enforce the civil rights obligations of recipients of LEAA Federal assistance.

/s/

RICHARD W. WELDE
Administrator
Law Enforcement Assistance Administration

February 6, 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Judge Corcoran

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

Plaintiffs oppose defendants' motion to dismiss or for summary judgment. For the reasons set forth in Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss or For Summary Judgement, defendants' motion must be denied.

Aside from the lack of merit of defendants' motion, discussed in plaintiffs' Memorandum, defendants' motion for summary judgment must fail even without opposition by plaintiffs under Rule 56(e) of the Federal Rules of Civil Procedure. In support of their motion, defendants have filed a four-paragraph, one-and-a-half page Statement of Material Facts which sets forth no material facts; they have filed four conclusory affidavits which similarly set forth no material facts; and they have filed an unsworn and uncertified Statement of Reasons and Appendix, a compilation of allegations which is inadmissible and hence may not be utilized by the parties or by the Court under Rule 56(e). Accordingly, defendants' motion *must fail* under Rule 56, even *without opposition*.

To the extent, however, that this Court views any of the above documents or allegations as setting forth any material facts under Rule 56, plaintiffs submit the attached opposition papers pursuant to Rules 56(e) & (f). The genuine issues as to material facts set forth in these opposition papers require the denial of defendants' motion for summary judgment.

Plaintiffs request an oral hearing on their opposition to defendants' motion.

Dated: Washington, D.C.
March 24, 1976

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UNITED STATES DISTRICT COURT
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PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Judge Corcoran

ORDER

Upon consideration of defendants' motion to dismiss or for summary judgment and of plaintiffs' opposition thereto;

IT IS HEREBY ORDERED that defendants' motion to dismiss or for summary judgment is denied.

IT FURTHER ORDERED that plaintiffs' discovery filed in September, 1975 shall be answered by defendants within 20 days of this Order, and that all other discovery in this action, including depositions previously noticed and to be noticed by plaintiffs, shall proceed forthwith.

SO ORDERED:

/s/_____
UNITED STATES DISTRICT JUDGE

Dated: March , 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75-1444

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL., PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

Judge Corcoran

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

-v-

RICHARD W. VELDE, ET AL., DEFENDANTS.

STATEMENT OF GENUINE ISSUES

Defendants' four-paragraph, one-and-a-half page Statement of Material Facts sets forth no material facts. Several allegations of fact, however, are set forth in defendants' unsworn and uncertified (and hence inadmissible) Statement of Reasons and Appendix.

Although plaintiffs thus are not required to do so, plaintiffs submit this Statement of Genuine Issues pursuant to Local Rule 1–9(h) and pursuant to Rules 56(e) & (f) of the Federal Rules of Civil Procedure. This Statement of Genuine Issues is submitted primarily in response to those allegations in defendants' Statement of Reasons and Appendix. The issues of material fact set forth herein are intended to be illustrative rather than exhaustive.

In this Statement of Genuine Issues, plaintiffs have arranged the issues under three major headings:

—Issues Concerning Defendants' Allegations As To Their Overall Civil Rights Program

—Issues Arising From Defendants' Inconsistent Allegations

—Issues Concerning Defendants' Allegations As To The Specific Examples Of Their Civil Rights Actions

Within these three headings, plaintiffs have responded where appropriate to defendants' inadmissible allegations: (a) with a summary of and reference to the allegation; (b) with a statement of the genuine issues; and (c) with a reference to plaintiffs' unresponded to discovery which, if responded to, would undermine and contradict defendants' allegations [Rule 56(f)] and/or with a reference to an affidavit or document submitted herewith or on file with the Court which places defendants' allegations in issue [Rule 56(e)]. For purposes of clarity, all references are made in abbreviated form.*

The genuine issues set forth herein should be reviewed in light of the claims in plaintiffs' complaint, *i.e.* that defendants have provided unabated LEAA funding to discriminatory law enforcement agencies in violation of defendants' constitutional and statutory civil rights obligations. Among those obligations are those set forth in § 518 of the Omnibus Crime Control and discrimination by recipients of LEAA funding. Section 518(c)(2), 42 U.S.C. § 3766(c)(2), sets forth the steps required of defendants to enforce that nondiscrimination mandate: first, defendants must determine whether "any unit of general local government has

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*Defendants' inadmissible 94-page Statement of Reasons is divided into two parts: a 47-page Statement and a 47-page Statement Appendix. References to the Statement are made to "S" and to the page number, *e.g.* "S 23." References to the Statement Appendix are to "SA," etc., *e.g.*, "SA 21."

References to plaintiffs' unresponded to discovery are as follows: Plaintiffs' First Interrogatories and Request for Admissions, *e.g.*, "Pl 1st I & RA ¶ 5." Plaintiffs' First Request for Production of Documents, *e.g.*, "Pl 1st RPD ¶ 6." Plaintiffs' Second Interrogatories, *e.g.*, "Pl 2nd I ¶ 7." Plaintiffs' Second Request for Admissions, *e.g.*, "Pl 2nd RA ¶ 8."

References to affidavits are to the affiant's name and, if appropriate to an exhibit, *e.g.*, "Larson Affidavit." References to affidavits and exhibits filed with Plaintiffs' Motion for a Preliminary Injunction are to that Motion and to the page number, *e.g.*, "Preliminary Injunction Motion, p. 128." References to findings on LEAA by the United States Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—To Extend Federal Financial Assistance*, Vol. VI (Nov. 1975), on file with this Court, are, *e.g.*, "Civil Rights Comm. p. ."

failed to comply with paragraph (1) [prohibiting discrimination] of this subsection or an applicable regulation"; second, defendants "shall request the chief executive [of the state] to secure compliance"; and third, if "the chief executive fails or refuses to secure compliance," defendants "shall exercise the powers and functions provided in section 509 [42 U.S.C. § 3757]"—the administrative hearing proceedings to terminate funding. These three simple requirements, particularly the requirement that defendants "shall" request the Governor to secure compliance, must be read in conjunction with § 518(a), 42 U.S.C. § 3766(a), which enjoins the defendants from "exercis[ing] any direction [or] supervision . . . over any police force or any other law enforcement and criminal justice agency."

ISSUES CONCERNING DEFENDANTS' ALLEGATIONS AS TO THEIR OVERALL CIVIL RIGHTS PROGRAM

1.

(a) Defendants' allegations are nearly devoid of any mention of their LEAA funding to law enforcement agencies—much less to those which have been judicially determined to have practiced unlawful discrimination, those which had been determined by the EEOC and by state agencies to have practiced unlawful discrimination, those which have been determined by defendants to have been in noncompliance with § 518(c), 42 U.S.C. § 3766(c), or to have been in noncompliance with § 518(c), 42 U.S.C. § 3766(c), or to have been in noncompliance with defendants' regulations, 28 CFR Part 42, and those whose practices are *prima facie* in violation of law, in noncompliance with § 518(c), 42 U.S.C. § 3766(c), or in noncompliance with defendants' regulations, 28 CFR Part 42.

(b) Which law enforcement agencies described above have defendants provided LEAA funding to? How much LEAA funding have defendants provided to each such law enforcement agency? Have defendants ever requested a Governor to secure compliance of any such agency? Have defendants ever initiated the statutory fund termination proceedings against any such agency?

(c) Pl 1st I & RA ¶¶ 7, 17–31, 35–36, 41–48, 55–61, 73–78, 84, 87–101, 110, 113–114, 117–125, 130, 136–140, 147–157, 159–165, 169–170, 172–176, 178–181, 186; Pl 1st RPD ¶¶ 1, 5–6; Pl 2nd I ¶¶ 5–6, 8–9, 17, 23, 29–32, 34–46; Pl 2nd RA ¶¶ 7,10; Plaintiffs Affidavits; Preliminary Injunction Motion, *passim*; Civil Rights Comm., pp. 378, 380–384, 777.

2.

(a) Defendants' allegations are also devoid of any mention of defendants' use of their statutory fund termination proceedings.

(b) Have defendants ever used their statutory fund termination proceedings against any law enforcement agency? How many times? Against which law enforcement agencies? What were the results of each such administrative hearing? Were there any appeals from the administrative hearings to the courts? How much funding have defendants provided to each such law enforcement agency?

(c) See ¶ 1(c) *supra*.

3.

(a) Defendants' allegations are devoid of any mention of defendants' requests to Governors to secure compliance—with the exception of one request on January 28 or 29, 1976 to the Governor of Pennsylvania, S 35; SA 27–28; Velde Affidavit ¶ 19; and one request on January 16, 1976 to the Governor of South Carolina, Velde Affidavit ¶ 20.

(b) Excepting the above two requests—both of which were made *after* plaintiffs had served their motion for a preliminary injunction—have defendants ever requested any Governors to secure compliance of LEAA recipients? How many times? When? What law enforcement agencies were involved? What were the results of the requests? How much LEAA funding have defendants provided to each law enforcement agency?

(c) See ¶ 1(c) *supra*.

4.

(a) Defendants allege that of a total "of 57, 575 state and local criminal justice agencies in the United States," only "19 criminal justice agencies have been reviewed" in compliance reviews by defendants. S 19, 23. Defendants' allegations make no mention about the results of those compliance reviews.

(b) What are the reasons as to why so incredibly few compliance reviews have been undertaken? What were the results of those few reviews which were undertaken? Are there any documents indicating the results of those reviews? Were any of the criminal justice agencies found to be in noncompliance? Which criminal justice agencies were reviewed and which were found to be in noncompliance? Have any of those agencies been adjudicated by the courts to have engaged in unlawful discrimination? How much LEAA funding have defendants provided to each of the reviewed agencies?

(c) Pl 1st I & RA ¶¶ 10–12, 23, 139–163, 173; Pl 1st RPD ¶¶ 1–2, 4–6; Pl 2nd I ¶¶ 5–12; Pl 2nd RA ¶ 6–7; Orazetti Affidavit and Ledyard Affidavit; Preliminary Injunction Motion 91–117; Civil Rights Commission, *passim*.

5.

(a) Defendants allege that of a total "of 57,575 state and local criminal justice agencies in the United States," only "33 criminal justice agencies" have had or are having their EEOPs audited by defendants. S 19,25. Defendants' allegations make no mention of the results of those audits.

(b) What are the reasons that so few EEOP audits were undertaken? Does an EEOP audit determine merely the sufficiency of an EEOP as described on paper or does it determine whether the EEOP has been effectively implemented? What were the results of those few audits which were undertaken? Are there any documents indicating the results of those audits? Were any of the criminal justice agencies found to be in noncompliance? Have any of those agencies been adjudicated by the courts to have engaged in unlawful discrimination? How much LEAA funding have

defendants provided to each of the reviewed agencies whose EEOPs were audited?

(c) Pl 1st I & R ¶¶ 15–26, 37; Pl 1st RPD ¶¶ 1–2, 5–6; Pl 2nd I ¶¶ 5–12, 18–27, 39–46; Pl 2nd RA ¶¶ 6–7; Preliminary Injunction Motion pp 9–116. Civil Rights Comm., *passim*.

6.

(a) Defendants allege that during FY 1975 only "41 pre-award compliance reviews" were scheduled, that 7 were conducted through on-site reviews, that 6 were conducted "through desk audits of EEOPs," and that "of the 28 remaining, approximately 90 percent of these applications were rejected for funding." S 27. Defendants' allegations make no mention of the results of those pre-award reviews.

(b) What are the reasons only 13 pre-award compliance reviews were conducted? Were the 6 EEOP desk audits included in the total number of 33 desk audits that have ever been conducted by defendants, as referred to *supra*, see S 25 (*i.e.*, double counting)? What were the results of these pre-award compliance reviews? Were any of the reviewed agencies or EEOPs found to be in noncompliance? Which ones? Of "the 28 remaining" whose applications were "rejected for funding," what were the reasons for rejection? Did any of the rejections have anything to do with civil rights noncompliance? Which agencies? Prior to FY 75, how many and which agencies were reviewed in pre-award compliance reviews? How many criminal justice agencies have ever received LEAA grants of $750,000 or more, and how many of those have ever been reviewed in a pre-award compliance review? How many of the criminal justice agencies which have received LEAA grants of $750,000 or more have been adjudicated by a court to have engaged in unlawful discrimination?

(c) See ¶ 4(c) and ¶ 5(c), *supra*.

7.

(a) Defendants allege that they have received 427 complaints of discrimination, 276 of which are listed as active

cases, and 35 of which are listed as active or open cases dating back to FY 1973. S 30. Defendants' allegations make no mention of how many if any of the complaints have been investigated, and no mention of determinations of compliance or of noncompliance.

(b) How many complaints have resulted in defendants reaching a determination of noncompliance? Against which agencies? How much LEAA funding have defendants provided to these agencies? How many complaints have been deferred pending litigation? Against which agencies? How many respondent agencies have been adjudicated by a court of engaging in unlawful discrimination? Which agencies? What is the longest period of time that defendants have taken to resolve a complaint (including still unresolved complaints) from the date of filing of the complaint?

(c) Pl 1st I & RA ¶¶ 7, 13–14, 21–26, 36–41, 51–55, 63–73, 83–87, 92–119, 130, 135–138, 145–146, 160, 169, 178–181, 188; Pl 1st RPD ¶¶ 1–2, 5–6; Pl 2nd I ¶¶ 13–20, 39–46; Pl 2nd RA ¶¶ 1, 4, 6–10; Plaintiffs' Affidavits; Preliminary Injunction Motion, *passim*; Civil Rights Comm., *passim*.

ISSUES ARISING FROM DEFENDANTS' INCONSISTENT ALLEGATIONS

8.

(a) Defendants' allegations do not establish their policy or practice with regard to their deferral of complaints, investigations, determinations of noncompliance, statutory fund terminations, etc. during the pendency of local litigation against law enforcement agencies. At best, Defendants have alleged that they "will ordinarily defer administrative action on a complaint when the same matter is pending in a court of law." S 41. Their alleged actions, however, belie their general allegation since they sometimes defer and sometimes do not on the basis of no recognizable criteria. See, *e.g.*, New Orleans deferral, SA 4; New Orleans *no* deferral, SA 6; New Orleans deferral, SA 6; New Orleans *no* deferral; Wayne County deferral, SA 8; Wayne County *no* deferral, SA 9; Honolulu *no* deferral, SA 13; Philadel-

phia *no* deferral, SA 27–28; San Francisco *no* deferral, SA 31; San Jose deferral, SA 35; Los Angeles no allegation, SA 35; Richmond deferral, SA 37; Indiana deferral, SA 40–41.

(b) Do defendants have an established policy or practice of deferring or not deferring during the pendency of local litigation against law enforcement agencies? If so, what is that policy or practice? Have defendants established any formal criteria for deferral? If defendants do defer to pending litigation, what is their authority or basis for such deferral? Do defendants maintain any documents which reflect their policy, practice, criteria or authority for deferral?

(c) See ¶ 7(c), *supra*.

9.

(a) Defendants' allegations do not establish their policy or practice with regard to their regulatory [28 C.F.R. 42.206 (a), 37 Fed. Reg. 16671 (Aug. 18, 1972)] preference for judicial enforcement, rather than administrative enforcement of § 518(c), 42 U.S.C. § 3766(c). On the one hand, defendants recognize that their regulatory preference for judicial enforcement is unlawful by alleging that they are required to proceed administratively with administrative enforcement first under § 518(c)(2), 42 U.S.C. § 3766(c)(2). S 36, S 41 note, S 18. On the other hand, they do not allege that they have yet amended their unlawful regulation, S9; although they allege that they have proposed to do so, Velde Aff ¶ 14. Defendants' actual practices are equally as obscure. For example, defendants allege that their referral of the Chicago Police Department's noncompliance to the Civil Rights Division predated the August 6, 1973 effective date of the mandate in § 518(c)(2), 42 U.S.C. § 3766(c)(2), for administrative enforcement, and thus was lawful. S 18. Yet, they are notably argumentative and full of excuses as to their identical referral of the Philadelphia Police Department's noncompliance *six months after* the effective date of the mandate in § 518(c)(2), 42 U.S.C. § 3766(c)(2). SA 18–22. Indeed, defendants concede that they continued to follow their unlawful regulation rather than the mandate of the statute for nearly two years until late January, 1976,

two weeks *after* plaintiffs sought a preliminary injunction against defendants for their refusal to initiate statutory fund termination against the Philadelphia Police Department. S 35; SA 27; Velde Aff ¶ 19. Defendants' practices become even more unclear by their reference to thirteen Civil Rights Division lawsuits against law enforcement agencies with no indications of how many of those lawsuits were referred by defendants in lieu of seeking the mandated administrative enforcement. Levi Affidavit Attachment 3.

(b) What is defendants' policy with regard to their regulatory preference for judicial enforcement rather than administrative enforcement? What are defendants' past and current practices with regard to their regulatory preference for judicial enforcement rather than administrative enforcement? How many times have defendants referred noncompliance to the Civil Rights Division rather than seeking administrative enforcement? Which law enforcement agencies were involved? When were the referrals made? How much LEAA funding have defendants provided to those departments?

(c) Pl 1st I & RA ¶ 88–119, Pl 1st RPD ¶¶ 1–6; Pl 2nd I ¶¶ 29–32, 35–41, 43–46; Pl 2nd RA ¶¶ 1–5, 6; Preliminary Injunction Motion pp 1–68, 126–134; Civil Rights Comm. pp 378–384, 777.

10.

(a) Defendants' allegations do not establish their policy or practice with regard to their regulations requiring LEAA recipients "to formulate, implement, and maintain an equal employment opportunity program" (an EEOP) as a precondition to funding. 28 C.F.R. § 42.302. Although defendants concede that "LEAA regulations require an EEOP as a condition of new and continued funding," S 25, and that "complete EEOPs are a prerequisite to funding," S 36, defendants' allegations are filled with examples of their having funded numerous law enforcement agencies which have incomplete, unsatisfactory or no EEOPs, *e.g.*, Detroit, S 16; Wayne County, SA 8–9; Philadelphia, SA 22; San

Francisco, SA 33; San Diego, SA 33-34; Los Angeles, SA 35; Hayward, SA 36; Indiana, SA 41. Moreover, nowhere in defendants' allegations is there any mention of any practice by defendants to determine whether the EEOPs are being implemented.

(b) What are defendants' policies and practices with regard to determining the adequacy and implementation of EEOPs as a prerequisite to funding? Do defendants require that EEOPs be filed with grant applications or with applications for continued funding of previous grants? If not, why not? And if not, how have defendants insured that recipients have formulated, implemented and maintained adequate EEOPs as a prerequisite to funding? How many recipients have been determined by defendants to have inadequate or unsatisfactory EEOPs? Which recipients? How much LEAA funding have defendants provided to those recipients? Have defendants requested any Governors to secure compliance from recipients? Which recipients?

(c) See ¶ 6(c), *supra*.

ISSUES CONCERNING DEFENDANTS' ALLEGATIONS AS TO THE SPECIFIC EXAMPLES OF THEIR CIVIL RIGHTS ACTIONS

11.

(a) Defendants allege that they conducted an on-site investigation of the Des Moines, Newton, Ames and Urbandale Police Departments in December, 1975, seven months after receiving a complaint that those departments used sex discriminatory height requirements in violation of LEAA regulations. SA 1.

(b) Why did defendants need an on-site investigation to verify the maintenance of height requirements? Why did defendants wait seven months to obtain verification? Did defendants obtain written verification earlier than December, 1975? Did the defendants determine the departments to be in civil rights noncompliance prior to December, 1975?

(c) Pl 1st I & RA ¶¶ 13-14, 120-138; Pl 1st RPD ¶¶ 1, 5-6; Pl 2nd I ¶ 15-17, 33-41, 46; Pl 2nd RA ¶¶ 1,6;

Heemstra Affidavit; Larson Affidavit; Civil Rights Comm. pp 369–375.

12.

(a) Defendants allege that "findings of fact, conclusions of law and recommendations" were sent to the Des Moines and Newton Police Departments in January, 1976. SA 1.

(b) What were those findings and conclusions? Did defendants determine the Departments to be in compliance or noncompliance? How much LEAA funding have defendants provided to the Departments?

(c) Pl 1st I & RA ¶¶ 13–14, 120–138; Pl 1st RPD ¶¶ 1, 5–6; Pl 2nd I ¶ 46; Heemstra Affidavit; Larson Affidavit.

13.

(a) Defendants allege that Stephen Glassman and/or the Civil Rights Division declined to assist sex complainant Nancy Moore in her challenge to the Des Moines Police Department's minimum height requirement. SA 2.

(b) Did Mr. Glassman purport to act on behalf of the defendants? Did he pass the complaint along to defendants? When did defendants first discover the Department's use of the height requirement in violation of LEAA regulations?

(c) See ¶¶11(c) and 12(c), *supra*.

14.

(a) Defendants allege that they received a complaint of sex discrimination against the use of minimum height requirements by the New Orleans Police Department and that thereafter on December 15, 1972, a letter was sent to the New Orleans Police Department "requesting comprehensive data on the employment practices of the department." SA 3.

(b) Was the request responded to? Did the response indicate noncompliance? Did defendants make a determination of noncompliance? How much LEAA funding have defendants provided to the Department?

(c) Pl 1st I & RA ¶¶10–14, 16, 20, 139–148; Pl 1st RPD ¶¶1, 5–6; Pl 2nd I ¶¶5–9, 15–17, 27–28, 46; Larson Affidavit; Civil Rights Comm. pp. 348–389.

15.

(a) Defendants allege that the above sex complainant a year later filed a federal court lawsuit and that defendants "subsequently advised the complainant that LEAA would defer investigation of her allegations pending the resolution of the litigation." SA 4.

(b) Were defendants unable to verify in more than a year's time that the Department maintained discriminatory height requirements in violation of LEAA regulations? Had defendants determined noncompliance during that year? On what basis and authority did defendants "defer" their civil rights obligations?

(c) See ¶14(c), *supra*.

16.

(a) Defendants allege that in June, 1974 a letter was sent to the New Orleans Police Department presenting their "findings of fact and recommendations," which "recommended, among other things, that the department eliminate its height requirement or prove its operational necessity." SA 4.

(b) Did the defendants' "findings of fact" include a finding of noncompliance? If not, why not? Was the Department's minimum height requirement not in fact in violation of LEAA regulations?

(c) See ¶14(c), *supra*.

17.

(a) Defendants allege that another letter was sent to the New Orleans Police Department in December, 1974 "indicating that the height requirement would have to be eliminated or shown to be an operational necessity." SA 5.

(b) Had defendants yet determined the Department to be in noncompliance? Had defendants initiated their statu-

tory fund termination procedures? If not, why not?

(c) See ¶14(c), *supra*.

18.

(a) Defendants allege that the Superintendent of the New Orleans Police Department, by letter dated February 18, 1975, "declined to eliminate the height requirement." SA 5.

(b) Had the defendants yet determined the Department to be in noncompliance? Did defendants make a determination of noncompliance immediately thereafter? If not, why not?

(c) See ¶14(c), *supra*.

19.

(a) Defendants allege that in January, 1975 they received two additional complaints of sex discrimination, that they were advised in February, 1975 that these complainants were also plaintiffs in pending litigation, and that the defendants "subsequently suspended conciliation efforts pending the litigation." SA 5, 6.

(b) Had defendants yet determined the Department to be in noncompliance? When did the defendants suspend conciliation efforts? Why did defendants suspend conciliation efforts? On what authority did defendants suspend their constitutional and statutory civil rights obligations?

(c) See ¶14(c), *supra*.

20.

(a) Defendants allege that in October of 1975 they again "requested that the New Orleans Police Department cease utilizing the height requirement." SA 6.

(b) Why did defendants reinstitute their civil rights activities after twice deferring to litigation earlier? Had defendants yet made a determination of noncompliance? Had defendants initiated the statutorily mandated fund termination proceedings? Did defendants continue to provide LEAA funding and to award LEAA grants to the New Or-

leans Police Department during the various years of their civil rights actions? If so, why? Was the filing of this lawsuit against defendants a cause of defendants' reinstatement of their threat to terminate funding?

(c) See ¶14(c), *supra*.

21.

(a) Defendants allege that a March 6, 1975 complaint against the Wayne County Sheriff's Department "was docketed." SA 7.

(b) When was the complaint docketed? Was there ever an investigation on the basis of this complaint? Was there a determination of noncompliance? If not, why not?

(c) Pl 1st I & RA ¶ 13–14, 17–19, 74–87; Pl 1st RPD ¶¶1, 5–6; Pl 2nd I ¶¶14–17, 33–41, 46; Booth Affidavit; Civil Rights Comm. pp. 369–393.

22.

(a) Defendants allege that in September, 1975, more than two months after the entry of a preliminary injunction against the Wayne County Sheriff's Department, they chose to "defer" to the jurisdiction of that court and to "review the orders of the court" in order "to secure compliance." SA 8.

(b) Did defendants ever review the orders of that court? If such a review was ever undertaken, did defendants determine noncompliance? Do defendants have any written documents concerning their review?

(c) See ¶21(c), *supra*.

23.

(a) Defendants allege that in October, 1975, subsequent to deferral, they requested the Wayne County Sheriff's Department to provide them with the Department's EEOP, and that in the EEOP which was received by the defendants, "several essential items were lacking" including "the components of the department's selection and promotion processes, and breakdowns, by race, sex, and national ori-

gin, of its applicant flow, transfers, and disciplinary actions." SA 8, 9.

(b) Why, subsequent to deferral, did defendants request the EEOP? Did the defendants determine from the EEOP that the Department was in noncompliance? If not, why not? How much LEAA funding had the defendants provided to the Department?

(c) See ¶21(c), *supra;* See also Larson Affidavit.

24.

(a) Defendants allege that they received a sex discrimination complaint involving the use of height requirements by the Honolulu Police Department in December, 1972 and that in January, 1973 the Honolulu Police Department "responded and submitted data to [defendants] which indicated that sex was, in fact, a consideration in assignments and promotions." SA 10.

(b) Did the Department's response admit noncompliance? Did the defendants determine noncompliance?

(c) Pl 1st I &RA ¶¶13–14, 16, 20, 164–170; Pl 1st RPD ¶1, 5–6; Pl 2nd I ¶¶14–17, 27–28, 33–41, 43–44, 46; Pl 2nd RA ¶¶1, ¶6; McAllister Affidavit; Civil Rights Comm. pp. 369–393.

25.

(a) Defendants allege that their next contact with the Honolulu Police Department occurred in May, 1973 and in January, 1974 when defendants attempted "to reach an accord in the matter." SA 11.

(b) Why did the defendants wait one year until again contacting the Department? Did the defendants determine noncompliance?

(c) See ¶24(c), *supra.*

26.

(a) Defendants allege that in May, 1974 they deferred their actions with regard to the Honolulu Police Department to the EEOC. SA 11.

(b) Why, after a year-and-a-half, did the defendants defer to the EEOC? Had the defendants made a determination of noncompliance against the Honolulu Police Department?

(c) See ¶24(c), *supra*.

27.

(a) Defendants allege that subsequent to the EEOC's failure of conciliation with the Honolulu Police Department, defendants again, a year later, in April, 1975, attempted "to further resolve the issues" of the Honolulu Police Department's sex discrimination. SA 12.

(b) Had defendants yet made a determination of noncompliance? If not, why not?

(c) See ¶24(c), *supra*.

28.

(a) Defendants allege that on August 26, 1975 they advised the Governor of Hawaii that "the Honolulu Police Department was not in compliance." SA 13.

(b) When did defendants make their determination of noncompliance? Why did defendants not defer to the lawsuit which had been filed one month earlier against the Honolulu Police Department charging sex discrimination, *McAllister v. Honolulu*, Civ. No. 75–248. (D. Haw. filed July 17, 1975)? Were defendants aware from the banner headline in the Hawaii Star-Bulletin newspaper on August 22, 1975, that they were about to be sued in this action for their failure to enforce their civil rights mandate against the Honolulu Police Department? Why didn't defendants request the Governor of Hawaii to secure compliance? How much LEAA funding had the defendants provided to the Honolulu Police Department during its years of noncompliance?

(c) See ¶24(c), *supra;* see also Larson Affidavit.

29.

(a) Defendants allege that they received a complaint of sex discrimination against the Philadelphia Police Depart-

ment on August 4, 1973 and that in November, 1973 they contacted the Civil Rights Division "about the possibility of referring [the] complaints to the Division for suit." SA 13–16.

(b) Had defendants made a determination of noncompliance against the Philadelphia Police Department? On what basis did the defendants have authority to refer such a complaint to the Civil Rights Division?

(c) Pl 1st I & RA ¶¶13–14, 17–22, 88–119; Pl 1st RPD ¶¶1–7; Pl 2nd I ¶¶14–17, 21–26, 29–41, 43–44, 46; Pl 2nd RA¶¶1–7; Preliminary Injunction Motion pp. 1–68, 126–134; Civil Rights Comm. pp. 369–393, 77.

30.

(a) Defendants allege that complainant Penelope Brace had been harassed and retaliated against, and that on January 17, 1974 defendant Rice "wrote to [Philadelphia Police] Commissioner O'Neill, advising him that the regulations enforcing Title VI of the Civil Rights Act of 1964 specifically prohibit retaliation against a complaint." SA 17.

(b) Did defendants determine the Philadelphia Police Department to be in noncompliance because of its harassment and retaliation in violation of defendants' regulations? If not, why not?

(c) See ¶29(c), *supra*.

31.

(a) Defendants allege that on February 1, 1974 defendant Rice telegrammed to the Philadelphia Police Department that "LEAA has determined that the Philadelphia Police Department has failed to comply with the LEAA Equal Employment Opportunity Regulations, 28 C.F.R. 42.201 *et seq.*, Subpart D. The LEAA has further determined that compliance with these regulations cannot be achieved by voluntary means," and that the matter had been referred to the Civil Rights Division. SA 18.

(b) Did defendants request the Governor of Pennsylvania to secure compliance from the Philadelphia Police Department prior to defendants referral of this matter to the Civil

Rights Division? If not, why not? Did the defendants at this stage commence their statutorily mandated proceedings to terminate funding to the Philadelphia Police Department? If not, why not?

(c) See ¶29(c), *supra*.

32.

(a) Defendants allege that complainant Brace was suspended by the Philadelphia Police Department on February 15, 1974, that "this action by the department violated the assurances given by [the Philadelphia Police Department] to [defendant Rice] on December 4, 1973, and to the Civil Rights Division on January 29, 1974," and that the Civil Rights Division subsequently filed a federal court lawsuit against the Philadelphia Police Department. SA 18–19.

(b) Did defendants determine that the Philadelphia Police Department's actions were in noncompliance? If not, why not? Did defendants initiate their mandatory administrative proceedings to terminate funding to the Philadelphia Police Department? If not, why not?

(c) See ¶29(c), *supra*.

33.

(a) Defendants allege that in March, 1974 they approved two one million dollar LEAA grants to the Philadelphia Police Department and that in April, 1971 they approved an additional LEAA grant to the Philadelphia Police Department. SA 19.

(b) On what basis and authority did defendants determine that they could award LEAA funding to the Philadelphia Police Department subsequent to their February, 1974, "determination" of noncompliance? What other grants during this period did LEAA approve for the Philadelphia Police Department?

(c) See ¶29(c), *supra*.

34.

(a) Defendants allege that at an unstated time they "sought guidance from the Office of Legal Counsel, Depart-

ment of Justice," about such matters as the defendants' "preference for judicial over administrative sanctions in LEAA's Equal Employment Opportunity Regulations, originally promulgated December 31, 1970 and reissued on August 9, 1972, 28 C.F.R. 42.201." SA 20.

(b) When were these matters discussed? What was the nature of the conversations that were held? Was it determined by defendants at that time that their regulation preferring judicial over administrative sanctions was illegal under Section 518(c)? Did defendants thereafter immediately amend their illegal regulation? If not, why not? Did the defendants at this time decide to follow the statute rather than their illegal regulation and to commence fund termination proceedings against the Philadelphia Police Department?

(c) See ¶29(c), *supra*.

35.

(a) Defendants allege that in a letter to Congressman Rangel dated January 9, 1975 they stated that whenever the defendants determine that the recipient is not in compliance with Section 518(c) or with defendants' regulations, defendants are required to request the Governor of the state to secure compliance and if that fails, defendants are "required" to initiate their administrative hearings under Section 509 of the Act. SA 21.

(b) Why did the defendants fail to follow this interpretation and to initiate statutory fund termination proceedings against the Philadelphia Police Department? Why did defendants fail to follow this interpretation and to amend their illegal regulation preferring judicial rather than administrative enforcement?

(c) See ¶29(c), *supra*.

36.

(a) Defendants allege that they thought it undesirable to initiate fund termination proceedings against the Philadelphia Police Department because of "the disruption that would be involved in fund cut-off; and uncertainty at that

time as to the extent to which employment discrimination is covered by Section 518(c)." SA 21.

(b) On what basis and authority do defendants have reason to consider "the disruption that would be involved in fund cut-off"? Were defendants aware that employment discrimination was prohibited by defendants own regulations, 28 C.F.R. § 42.204, 37 Fed. Reg. 16671 (August 18, 1972), and 28 C.F.R. §§ 42.301 *et seq.*, 38 Fed.Reg. 23516 (August 31, 1973)?

(c) See ¶29(c), *supra*.

37.

(a) Defendants allege that in their letter to Congressman Rangel they also stated that more important than following their statutory mandate by cutting off funding to the Philadelphia Police Department, "the impact upon all citizens of Philadelphia of withdrawing the additional police protection being provided was deemed to be on balance of more immediate consequence." SA 22.

(b) On what basis and authority do defendants claim that they can violate their statutory mandate to initiate administrative proceedings to terminate funding—on such grounds as alleged above?

(c) See ¶29(c), *supra*.

38.

(a) Defendants allege that in September, 1974 they informed the Philadelphia Police Department "that the department . . . had sixty days to prepare EEOP's meeting the requirements of Subpart E of the LEAA Equal Employment Opportunity Regulations," and that they sent to the Police Department "a list of deficiencies in the police department's current EEOP." SA 22.

(b) Did the defendants at this point determine that the Philadelphia Police Department was in noncompliance? If not, why not?

(c) See ¶29(c), *supra*.

39.

(a) Defendants allege that on "January 28, 1976, LEAA informed Governor Milton Shapp of Pennsylvania of its determination that the Philadelphia Police Department is in noncompliance with Section 518(c)(1) of the Crime Control Act and Subpart D of the LEAA EEOP regulations." SA 27.

(b) Why did defendants wait two years after their February 1, 1974 "determination" of noncompliance to request the Governor of Pennsylvania to secure compliance? Was defendants' request to the Governor of Pennsylvania, two years after defendants' determination, made in direct response to the preliminary injunction motion served in this case upon the defendants on January 14, 1976? Why did defendants refuse to make such a request to the Governor of Pennsylvania for the two years preceding the request which was finally made? Had defendants in fact made an earlier request of the Governor of Pennsylvania? How much LEAA funding had been provided by the defendants to the Philadelphia Police Department during this two year period of their illegally refusing to initiate fund termination procedures?

(c) See ¶29(c), *supra*.

40.

(a) Defendants allege that in April, 1973 they received a complaint of discrimination against 19 cities in California, and that they decided in April or May, 1973 that only three of the respondent cities would be investigated by the defendants. SA 29–30.

(b) On what basis did the defendants decide to conduct investigations of only three of the respondent police departments? Had defendants received any previous complaints of discrimination against any of the respondents? Had defendants made any previous investigations or determinations of noncompliance? Did defendants consider themselves to be constitutionally and statutorily mandated to make determinations of compliance or noncompliance with regard to all

19 California police departments, or only with regard to one-third of all respondents?

(c) Pl 1st I & RA ¶¶9–16, 20, 21–22, 42–73; Pl 1st RPD ¶¶1–6; Pl 2nd I ¶¶1–26, 33–41, 43–44, 46; Pl 2nd RA ¶¶1, 6, 8–9; McKinney Affidavit; Preliminary Injunction Motion pp 1–6, 69–125, 139–142; Civil Rights Comm. pp 348–393, 777.

41.

(a) Defendants allege that one of the three police departments which they selected for review was the San Francisco Police Department, although they had been advised by complainants' counsel that the San Francisco Police Department had just been sued for employment discrimination. SA 31.

(b) On what grounds did the defendants in this instance choose not to defer to the litigation that had been commenced against the San Francisco Police Department? See, *Officers for Justice v. Civil Service Commission of San Francisco*, 371 F.Supp. 1328 (N.D. Cal. 1973) and 395 F.Supp. 378 (N.D. Cal. 1975). How much LEAA funding have defendants provided to the San Francisco Police Department?

(c) See ¶40(c), *supra*.

42.

(a) Defendants allege that on December 12, 1973 defendant Rice met with the Chief of the San Diego Police Department "to discuss the results of the review" conducted by defendants, and that on April 2, 1974 defendants forwarded a letter "of recommendation" to the San Diego Police Department. SA 32.

(b) What were "the results" of defendants' review of the San Diego Police Department? Did defendants determine the San Diego Police Department to be in noncompliance? What was the "recommendation" which was sent to the San Diego Police Department in April, 1974? Did defendants make a determination of noncompliance? Did defendants request the Governor of California to secure compliance?

How much LEAA funding have defendants provided to the San Diego Police Department?

(c) See ¶40(c), *supra*.

43.

(a) Defendants allege that a subsequent review of the San Diego Police Department's EEOP "indicated several areas of concern" and that in November, 1975, defendants informed the San Diego Police Department about "these problem areas." SA 33–34.

(b) What were these "areas of concern" and "problem areas?" Did defendants determine the San Diego Police Department to be in noncompliance?

(c) See ¶40(c), *supra*.

44.

(a) Defendants allege that on November 21, 1975 they "requested the EEOP of all of the 19-cities police departments which [they] had not yet received." SA 32.

(b) To how many of the 19 police departments was that request sent? Why did defendants wait more than a year-and-a-half after the filing of the complaint to finally attempt to obtain the EEOPs? Did defendants make determinations of noncompliance against any of those police departments? Did defendants commence administrative proceedings to terminate LEAA funding to any of those police departments?

(c) See ¶40(c), *supra*.

45.

(a) Defendants allege that the EEOP of the Berkeley Police Department, which was received in August, 1975, "was not complete and additional information on the selection process is being requested." SA 34.

(b) What aspects of that EEOP were not complete? Did defendants determine the Police Department to be in noncompliance? If not, why not? Did defendants ever initiate administrative proceedings to terminate funding to the

Berkeley Police Department? How much LEAA funding have defendants given to the Berkeley Police Department?

(c) See ¶40(c), *supra*.

46.

(a) Defendants allege that they received a complaint against the San Jose Police Department and that they have been "deferring administrative action in this case during the judicial proceeding." SA 35.

(b) When was the LEAA complaint filed against the San Jose Police Department? Why have defendants deferred administrative proceedings in this case when they declined to defer administrative proceedings with regard to the San Francisco litigation? Have defendants determined the San Jose Police Department to be in noncompliance? Is the San Jose Police Department in noncompliance? How much funding have defendants provided to the San Jose Police Department?

(c) See ¶40(c), *supra*.

47.

(a) Defendants allege that in November, 1975 they informed the Los Angeles Police Department that its EEOP "disclosed certain areas of concern." SA 35.

(b) What are those "areas of concern?" Have defendants determined the Los Angeles Police Department to be in noncompliance? Why have defendants not deferred to the litigation that is pending against the Los Angeles Police Department? See, *Blake v. Los Angeles*, Civ. No. 73-1962-WMB (S.D. Cal. filed 1973). How much LEAA funding have defendants provided to the Los Angeles Police Department?

(c) See ¶40(c), *supra*.

48.

(a) Defendants allege that "the EEOP of the Hayward Police Department was evaluated and found to be inadequate." SA 36.

(b) In what ways was the EEOP "found to be inadequate?" Did defendants make a determination of noncompliance? Did defendants initiate their administrative proceedings to terminate their LEAA funding to the Hayward Police Department? How much LEAA funding have defendants awarded to the Hayward Police Department?

(c) See ¶40(c), *supra*.

49.

(a) Defendants allege that on November 21, 1975 they requested the EEOPs of the Police Departments of Fresno, Glendale, Huntington Beach, Stockton, Pasadena, Sacramento, San Bernadino, Fremont, Sunnydale, and Inglewood, California, each of which had been named as a respondent in the complaint filed more than a year-and-a-half previously. SA 36.

(b) Why did defendants wait one-and-a-half years to request the EEOPs of the foregoing respondent police departments. Have defendants made any determinations of noncompliance against those police departments? How much LEAA fundings have defendants provided to those police departments?

(c) See ¶40(c), *supra*.

50.

(a) Defendants allege that, in response to a complaint against the Richmond Police Department, they advised the complainant that they were "deferring investigation until a final resolution was reached by the court." SA 37.

(b) On what grounds did defendants defer to the litigation pending against the Richmond Police Department when they refused to defer to the litigation pending in the same federal court against the San Francisco Police Department? On what basis and authority did defendants defer their statutory civil rights obligations? How much LEAA funding have defendants provided to the Richmond Police Department?

(c) See ¶40(c), *supra*.

51.

(a) Defendants allege that in June, 1974 defendant Rice attended a "presentation" of the California Fair Employment Practices Commission's "review" of the Oakland Police Department, and that defendants in September, 1975, apparently after conducting their own investigation, prepared "a final case summary" of defendants' "finding" of noncompliance by the Oakland Police Department. SA 37–39.

(b) What was the nature of the "presentation" by the California FEPC? Did that "presentation" indicate that the Oakland Police Department was in noncompliance? Did defendants make a determination of noncompliance? After defendants had conducted their own investigation, and prepared "a final case summary," did defendants make a determination of noncompliance? Have defendants initiated administrative proceedings to terminate their LEAA funding to the Oakland Police Department? How much LEAA funding have defendants provided to the Oakland Police Department?

(c) See ¶40(c), *supra*; see also Larson Affidavit.

52.

(a) Defendants allege that they received complaints of discrimination against the Indiana State Police Department on August 14, and August 26, 1975; that they were aware of the July 31, 1975 Federal Court Decision *Bailey v. DeBard*, No. IP 74–458–C (S.D. Ind., July 31, 1975) declaring to be discriminatory and unlawful the Department's use of its written tests, and promotion procedures, and recruitment, and finding that its EEOP had never been implemented; but that defendants refused to take any action with regard to the Department. SA 40–41.

(b) On what grounds did defendants refuse to take any action against the Department, especially in view of the court's specific holding that the Department had violated 42 U.S.C. "3766(c) and the [LEAA] regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308?" Did the court's opinion indicate to defend-

ants that the Department was in noncompliance? Did defendants make a determination of noncompliance? Did defendants request the Governor of Indiana to secure compliance? If not, why not? Did defendants ever initiate their statutory fund termination procedures? How much LEAA funding have defendants provided to the Department?

(c) Pl 1st I & RA ¶¶13–16, 21, 25, 27–41, 191; Pl 1st RPD ¶¶1–6; Pl 2nd I ¶¶14–17, 21–26, 33–44, 46; Pl 2nd RA ¶¶1, 10; Bailey Affidavit; Larson Affidavit; Preliminary Injunction Motion, pp. 91–116; Civil Rights Comm. pp. 369–393, 777.

53.

(a) Defendants also allege that previously in November, 1974, they had "confirmed" indications that the Indiana State Police Department's EEOP was "deficient." SA 41.

(b) What were these deficiencies? The defendants determine the Department to be in noncompliance. Did defendants request the Governor of Indiana to secure compliance? Did defendants initiate their statutory fund termination procedures?

(c) See ¶52(c), *supra*.

54.

(a) Defendants allege that in January, 1973, subsequent to their compliance review of the Portland Police Bureau, they imposed "eight requirements" upon the Bureau. SA 43.

(b) What was the nature and depth of the discrimination which caused defendants to impose "eight requirements" on the Bureau? Are there any documents prepared by defendants indicating the scope of the Bureau's noncompliance? Did defendants determine the Bureau to be in noncompliance? Did defendants request the Governor of Oregon to secure compliance? Did the defendants initiate their statutory fund termination procedures? How much LEAA funding have defendants provided to the Bureau?

(c) Pl 1st I & RA ¶¶10–12, 15, 20, 149–163; Pl 1st RPD ¶¶1, 5–7; Pl 2nd I ¶¶5–12, 18–26, 33–38, 43–44, 46; Pl 2nd RA ¶¶1, 6–7; Orazetti Affidavit; Ledyard Affidavit; Larson Affidavit; Preliminary Injunction Motion pp 91–116; Civil Rights Comm., pp 348–393.

55.

(a) Defendants also allege that two years later, in December, 1974, defendants requested the Portland Police Bureau to submit "for review" "an Equal Employment Opportunity Program (EEOP) in accordance with 28 CFR 42.301 *et seq.*" SA 45.

(b) Were defendants aware of whether the Bureau actually had an EEOP? If there was an EEOP in existence at that time, had defendants found that EEOP to be *not* "in accordance with 28 C.F.R. 42.301 *et seq*?" Did defendants determine the Bureau to be in noncompliance? Are there any documents prepared by defendants indicating such noncompliance? Did defendants initiate their statutory fund termination procedures?

(c) See ¶54(c), *supra*.

56.

(a) Defendants allege that "plaintiffs Orazetti and Ledyard [Portland police officers] were interviewed by members of [defendants'] review team during the on-site visit; and that it "never has been the policy of [defendants] to discourage the filing of complaints of discrimination." SA 47.

(b) Who were the members of the review team? Did any of those members advise plaintiffs Orazetti and Ledyard that the filing of complaints was unnecessary, that such filing would do no good, and that defendants would never terminate their LEAA funding to any recipient?

(c) See ¶54(c), *supra*.

47.

(a) Defendants allege that in June, 1975, they made a "finding" "that the Detroit Police Department's EEOP was

not in compliance with LEAA guidelines," and that in August, 1975, "recommendations" were sent to the Police Department. S 16.

(b) What were the nature and scope of the Department's noncompliance and of defendants' recommendations? Did defendants request the Governor of Michigan to secure compliance? Did defendants initiate their statutory fund termination proceedings? How much LEAA funding have defendants provided to the Department?

(c) See ¶¶6(c) and 10(c), *supra*; see also Larson Affidavit.

58.

(a) Defendants allege that in January, 1975, defendant Velde "was apprised of the fact that the cities of Pittsburgh and McKeesport had failed to complete an EEOP covering the local Police Departments as required." S 36. See also Velde Affidavit ¶18.

(b) Did defendant Velde determine that the Pittsburgh and McKeesport Police Departments had merely failed "to complete" an EEOP as required or did defendant Velde actually determine that the Departments had failed to formulate any EEOP, much less implement one, as required by defendants' regulations? Did defendants request the Governor of Pennsylvania to secure compliance? Did defendants initiate statutory fund termination proceedings? How much LEAA funding have defendants provided to the Departments?

(c) See ¶¶6(c) and 10(c), *supra*.

59.

(a) Defendants allege that in February, 1975 defendant Velde "became aware of a non-compliance matter involving the Police Department of St. Louis." S 35. See also Velde Affidavit. ¶17.

(b) What were the nature and scope of the Department's noncompliance as determined by defendant Velde? Did defendants request the Governor of Missouri to secure compliance? Did defendants initiate statutory fund termination

proceedings? How much LEAA funding have defendants provided to the St. Louis Police Department?

(c) Pl 1st RPD ¶6; Pl 2nd I ¶18–26; Pl 2nd RA ¶1; Larson Affidavit; Civil Rights Comm. pp 332–393.

60.

(a) Defendants allege that on an unspecified date a "comprehensive report" on the complainant practices of the Chicago Police Department was issued indicating that the Department "appeared to be engaging in unlawful discriminatory employment practices." S 18.

(b) What is the date of that "comprehensive report?" Does the report contain findings or determinations of noncompliance? Did defendants make a determination of noncompliance? Did defendants ever request the Governor of Illinois to secure compliance? Did defendants ever initiate their statutory fund termination proceedings? How much LEAA funding have defendants awarded to the Chicago Police Department?

(c) Pl 1st I & RA ¶188; Pl 1st RPD ¶1; see also ¶¶1(c) and 2(c), *supra*.

61.

(a) Defendants also allege that a lawsuit entitled *United States v. City of Chicago* "led to the withholding of all general revenue sharing funding to the City of Chicago until the City comes into civil rights compliance." S 18.

(b) Hasn't revenue sharing been upheld not pursuant to the good offices of the Office of Revenue Sharing or of the United States but as a result of court orders in the private enforcement lawsuit filed against the Office of Revenue Sharing?

(c) See *Robinson v. Shultz*, 7 E.P.D. ¶9270 (D.D.C. 1974), *supplemental order*, 8 E.P.D. ¶9832 (D.D.C. 1974), *stay denied*, 9 E.P.D. ¶9861 (D.D.C. 1975), *order confirmed*, 395 F.Supp. 329 (N.D. Ill. 1975), *permanent order*, ___ F. Supp. ___, 11 E.P.D. ¶10,597 (N.D. Ill. 1976). See also ¶60(c), *supra*.

Dated: Washington, D.C.
March 24, 1976

E. RICHARD LARSON
KATHLEEN WILLERT PERATIS
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22 East 40th Street
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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, INC., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

E. RICHARD LARSON, being first duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in the above-styled action. I submit this affidavit pursuant to Rule 56(f) of the Federal Rules of Civil Procedure in opposition to defendants' Motion for Summary Judgment.

2. In support of their Motion for Summary Judgment, defendants filed a four-paragraph, one-and-a-half-page Statement of Material Facts; plaintiffs contend that defendants Statement of Material Facts sets forth no material facts. Defendants also filed affidavits of each of the individual defendants; plaintiffs contend that defendants' affidavits are conclusory and set forth no material facts upon which summary judgment could be entered. Defendants also filed a 94-page, unsworn and uncertified Statement of Reasons and Appendix; plaintiffs contend that this compilation of allegations is inadmissible under Rule 56(e) of the Federal Rules of Civil Procedure and thus may not be utilized by the parties or by the Court on a motion for summary judgment.

3. To the extent, however, that this Court views any of the above documents or allegations as setting forth any material facts, plaintiffs contend that summary judgment must be denied under Rule 56(f) of the Federal Rules of Civil Procedure on the grounds that defendants have not responded to any of plaintiffs' discovery and that plaintiffs accordingly are unable to present sufficient sworn and admissible evidence in opposition to defendants' allegations.

4. This action concerns plaintiffs' claims that defendants have provided millions of dollars of unabated LEAA funding to discriminatory law enforcement agencies in violation of defendants' constitutional and statutory duties. The issues raised by this action are thus issues concerning the defendants' actions and inactions. Resolution of these issues depends upon facts, knowledges, motivations, and circumstances which are exclusively in defendants' control.

5. Plaintiffs have diligently sought to discover these facts, knowledges, motivations and circumstances from defendants. On September 11, 1975, one week after this action was filed, plaintiffs served the following discovery on defendants: (1) Plaintiffs' First Interrogatories and First Request for Admissions; (2) Plaintiffs' First Request for Production of Documents; (3) Plaintiffs' Second Interrogatories; and (4) Plaintiffs' Second Request for Admissions.

6. Defendants reacted to the aforementioned discovery first by obtaining an extension from the plaintiffs and later, on November 4, 1975, by filing a Motion for a Protective Order Staying Discovery. On November 14, 1975, plaintiffs filed an Opposition to Defendants' Motion. In this Court's Order of December 22, 1975, this Court granted plaintiffs' unopposed motion to drop a plaintiff, and plaintiffs were required to file an amended complaint by January 5, 1976; paragraph four of this Court's Order further stated that "All proceedings herein are stayed except as provided for in this Order." On January 2, 1976, plaintiffs filed their Amended Complaint.

5. On January 14, 1976, plaintiffs served (along with their Motion for a Preliminary Injunction and a Writ of Mandamus) a Motion to Vacate the Stay on Answering Pre-

vious Discovery in this Action. That Motion is still pending before this Court.

6. On January 14, 1976, plaintiffs also served a Notice of Deposition for the purposes of deposing defendant Herbert C. Rice, the Director of defendant LEAA's Office of Civil Rights Compliance. The deposition was noticed for January 27, 1976. On January 23, 1976, I spoke by telephone with Nathan Dodell, one of the attorneys for defendants, and was advised that defendant Rice would not appear for the deposition noticed by plaintiffs on the grounds that defendants understood this Court's Order of December 22, 1975 to have stayed defendants' responses to *all* of plaintiffs' past *and future* discovery. This telephone conversation was confirmed by letter dated January 23, 1976 from defendants' counsel. [See Exhibit A attached hereto.] Defendant Rice did not appear on January 27, 1976 for his noticed deposition.

7. The discovery filed to date by plaintiffs, if answered by defendants, would go a good way toward establishing the facts, knowledges, motivations and circumstances, which are exclusively in defendants' control and which are material to the issues in this case. In the Statement of Genuine Issues filed herewith, plaintiffs have indicated those portions of plaintiffs' September 11, 1975 discovery which are material to defendants' allegations and to the genuine issues raised by those allegations. Depositions of each of the individual defendants and of various of their employees and subordinates are also necessary to establish the facts, knowledges, motivations and circumstances which are exclusively in defendants' control and which are material to the issues in this case.

/s/ _____
E. RICHARD LARSON

Sworn to before me this 22nd day of March, 1976

/s/ _____
BELLA GREEN
Notary Public

LARSON AFFIDAVIT
EXHIBIT

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES ATTORNEY
Washington, D.C. 20001

23 January 1976

William E. Caldwell, Esquire
Lawyers Committee for Civil
Rights Under Law
733 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: *National Black Police Association, et al.* v. *Richard W. Velde, et al.* Civil Action Number 75–1444

Dear Mr. Caldwell:

This is in reference to the Notice of Deposition of Herbert C. Rice, mailed January 14, 1976 and received by us January 19, 1976. We have the following comments:

1. By order of December 22, 1975, the Court stayed proceedings in this action. That stay is still in effect. Accordingly, the notice of deposition is without force and effect.

2. The continued effectiveness of the stay is confirmed by the fact that plaintiffs' counsel have deemed it necessary to move to vacate the stay (by motion mailed and received with the notice of deposition).

3. There is outstanding our motion for a protective order, which includes all discovery in this action. That motion has not been reached because of the interval that resulted from your violation of Rule 8(a) of the Federal Rules of Civil Procedure and the necessity that plaintiffs replead, as found and ordered by Judge Corcoran.

4. At the time that we respond to the motion to vacate the stay, we will supplement our motion for a protective order to expressly refer to the notice of deposition. Incidentally, at present the time to respond to the motion to vacate the stay does not expire until January 27, 1976, the very same day for which plaintiffs' counsel noted the deposition.

5. Plaintiffs previously have requested production of documents, and the defendants have moved for a protective order, which is pending. Now plaintiffs again request production of documents in the notice of deposition, prior to resolution of the motion for a protective order. Moreover, the request does not even conform to Rule 34 in seeking production earlier than the thirty day period specified in the Rule.

In view of the foregoing, defendant Rice will not appear for the deposition noted by plaintiffs' counsel.

One final word: it continues to seem to us that plaintiffs' counsel are not conducting this matter in such a manner as to lead to its orderly resolution. We have been seeking to prepare a timely response to plaintiffs' wide-ranging pleadings in this case, including the latest amended complaint. (Indeed, while the new complaint improves upon that found in violation of Rule 8(a) its 112 paragraphs and 36 pages still indicate that plaintiffs do not fully appreciate either the meaning of Rule 8(a) or the direction of Judge Corcoran).

During this period of our preparation, and when our papers will shortly be due (February 2, 1976), plaintiffs have sought to take a deposition while the stay is in effect. And they have served upon us a belated motion for preliminary injunction, mailed January 14, 1976, more than four months after institution of suit, accompanied by voluminous documentation. We wish to help resolve this matter in an orderly manner. Plaintiffs counsel do not appear to be assisting in that effort.

While Nathan Dodell of this office was preparing this letter on Friday morning January 23, 1976, he was telephoned by E. Richard Larson, Esq., one of plaintiffs' attorneys. Mr. Dodell advised Mr. Larson that because of the stay and the outstanding motion for a protective order Mr. Rice would not appear and that a letter would be sent to plaintiffs' counsel stating our position.

Sincerely,

EARL J. SILBERT
United States Attorney

By:

ROBERT N. FORD
Chief, Civil Division

cc: E. RICHARD LARSON, ESQ.
American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016

MELVIN L. WULF, ESQ.
American Civil Liberties Union
410 First Street, S.E.
Washington, D.C. 20003

JOHN KELSON, ESQ. (2 copies)
Civil Division
Department of Justice

cc: THOMAS MADDEN, ESQ.
General Counsel
Law Enforcement Assistance Administration
Room 1268
633 Indiana Avenue, N.W.
Washington, D.C. 20531

HERBERT RICE, ESQ.
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
416 - 5th Street, N.W.
Washington, D.C. 20531

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Indiana)
) ss.
County of Lake)

BRUCE BAILEY, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Gary, Indiana.

3. I have been twice denied employment by the Indiana State Police Department.

4. As of August, 1974, the Indiana State Police Department employed 937 uniformed state troopers and higher ranking oficers, of whom three (or .32%) were black. Currently, there are only three black state troopers. According to the 1970 census, the population of the State of Indiana was 6.9% black.

5. In the history of the Department, only four blacks have been employed as state troopers. Only one black trooper has ever been promoted above the entry-level rank of state trooper. No women have ever been employed as state troopers by the Department.

6. For the past decade, all applicants for employment as a state trooper have been required to achieve an arbitrarily determined passing score on a written examination, the Otis Gamma C test. On the last two occasions that the test was administered the state trooper applicants, blacks were effectively eliminated. In 1974, 57% of the white applicants passed while 0% of the black applicants passed; in 1973, 57% of the white applicants passed while only 29% of the black applicants passed. The Otis Gamma C test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of state trooper.

7. State troopers who seek promotion to a command position must have five years' service with the Department, and must pass an oral interview based upon an evaluation of the trooper's record. Neither of the requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for any command position. Moreover, the Department has limited the breadth of experience of the few black troopers through discriminatory assignments, hereby limiting the promotion opportunities of the black troopers.

8. The Indiana State Police Department has never engaged in any formal recruitment programs directed at recruiting black applicants. The primary means of recruitment has been through the posting of civil service notices and word-of-mouth recruitment.

9. In May, 1972, I applied for employment as a state trooper with the Indiana State Police Department. In August, 1972, I took the written examination, and shortly thereafter I was notified by the Department that I had not passed the examination.

11. On August 29, 1974, the Indiana State Conference of Branches of the NAACP and I filed a class action complaint in the United States District Court for the Southern District of Indiana alleging unlawful race discrimination in violation of 42 U.S.C. § 1981 and § 1983, § 1985(3), § 1988, §§ 2000d *et seq.*, and § 3755(c) against the Indiana State Police Department and various of its officials, *Bailey v. De-*

Bard, No. IP 74–458–C (S.D. Ind., filed Aug. 26, 1974). On November 6, 1974, I received a right-to-sue notice from the United States Department of Justice. Shortly thereafter, I amended my complaint to allege unlawful discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*

12. On or about October 15, 1974, less than two months after the filing of my complaint in *Bailey v. DeBard*, *supra*, the Indiana State Police Department commenced a training school for a new class of state troopers to fill 52 newly authorized state trooper positions. The entire class of new state troopers was white.

13. On July 31, 1975, the Court in *Bailey v. DeBard*, *supra*, issued a Memorandum Opinion and Judgment declaring unlawful the Department's use of its written tests, the Department's promotion procedures, and the Department's failure to recruit black troopers. The Court specifically held the Department and its officials to be in violation of the Thirteenth and Fourteenth Amendments and of 42 U.S.C. §§ 1981, 1983, 1985(3), 1988, 2000d *et seq.*, 2000e *et seq.* "and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308." [A certified copy of the Court's Memorandum Opinion and Judgment is attached hereto as Exhibit A].

14. In its Memorandum Opinion and Judgment, the Court noted that the Superintendent of the State Police Department, on July 1, 1974, had certified that the Department intended to formulate an Equal Employment Opportunity Program in accordance with the LEAA regulations, 28 C.F.R. §§ 42.301 *et seq.*, but that the EEOP had never been financed much less implemented.

15. In its Memorandum Opinion and Judgment, the Court issued only declaratory relief. The Court set October 1, 1975, as the trial date to determine the nature of the injunctive relief which should be ordered.

16. In August, 1975, I filed a charge of discrimination with LEAA and enclosed a copy of the Court's Memorandum Opinion and Judgment in *Bailey v. DeBard*, *supra*. In that charge, I urged LEAA to "suspend all LEAA funding

to the Indiana State Police Department and [to] initiate adminsitrative proceedings to recover all LEAA monies already unlawfully spent by the Indiana State Police Department." [A copy of that charge is attached hereto as Exhibit B].

17. Although I understand that LEAA has docketed my charge, I have received no response to my charge. LEAA has taken no steps toward suspension of LEAA funding to the Indiana State Police Department or toward recovery of LEAA monies unlawfully spent by the Indiana State Police Department.

18. I believe that the Indiana State Police Department, in the past five years, has received in excess of $3,000,000 in LEAA funding. LEAA has never terminated LEAA funding to the Indiana State Police Department for civil rights non-compliance.

/s/ _____
BRUCE BAILEY

Sworn to before me this 27th day of September, 1975.

/s/ _____
Notary Public

BAILEY AFFIDAVIT
EXHIBITS

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, New York 10016
(212) 725-1222

September 12, 1975

Clerk of the Court
United States District Court
for the Southern District of Indiana
United States Court House
Indianapolis, Indiana 46201

Dear Gentlepeople:

Please send me a *certified copy* of Judge Holder's July 31, 1975, lengthy Memorandum Opinion and Judgment in *Bailey* v. *DeBard*, No. IP 74–458–C (S.D. Ind., opinion signed July 31, 1975).

Please bill me at the above address for the cost of the certified copy.

Thank you for your assistance.

Sincerely,

/s/ _____
E. RICHARD LARSON
National Staff Counsel

ERL:mm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

No. IP 74-458-C

BRUCE BAILEY, individually and on behalf of all others similarly situated,

INDIANA STATE CONFERENCE OF BRANCHES OF NAACP, on behalf of its members and on behalf of all others similarly situated.

vs.

ROBERT L. DEBARD, individually and in his official capacities as Superintendent of the Indiana State Police Department and Chairman of the Law Enforcement Training Board,

RICHARD JONES, individually and in his official capacity as Personnel Director of the Indiana State Police Department,

NORMAN R. REEVES, individually and DAVID J. ALLEN, individually and E. WILLIAM SCHILLING, individually and GARTH WHIPPLE, individually and JOHN KENDALL, individually and JOHN ZENTZ, individually and in their official capacities as members of the Indiana State Police Board,

THE INDIANA STATE POLICE DEPARTMENT,

THE INDIANA STATE POLICE BOARD,

IVAN H. BRINEGAR, individually and
ROBERT R. BROWN, individually and
EMERY M. BUNNELL, individually and
HAROLD LASAGE, individually and
WILLIAM F. LAWLER, JR., individually and
LEE E. MILLER, individually and
GROVER C. OSBORN, individually and
JAMES R. PEVA, individually and
GEORGE F. RAPP, M.D., individually and
GEORGE W. WISE, individually and

in their official capacities as members of the Indiana Law Enforcement Training Board, and

THE INDIANA LAW ENFORCEMENT TRAINING BOARD,

KENNY RAY ADAMS, and
JAMES R. ANDERSON, and
MICHAEL L. BECHER, and
LLOYD J. BOSTON, and
GLENN D. BOVARD, and
JOHN MICHAEL BRYANT, and
STEPHEN WAYNE CHAMBERS, and
JERRY W. CLIVER, and
DAVID LEE COLLINS, and
DAVID B. GRAVES, and
FREDERICK W. EVANS, and
STEVEN R. DUVALL, and
JOHN D. DUNN, and
JOHN L. DREYER, and
DONALD E. DOMBROSKI, and
PAUL D. DALTON, and
TERRY JAMES CORSO, and
ROBERT A. CORKWELL, and
KEVIN D. HAMILTON, and
TOM HART, and
LAWRENCE S. HORINE, and
JACK G. HORNER, and
THOMAS D. JARVIS, and
RICHARD L. KAGY, and
JIM W. KAYLOR, and
ROBERT J. LATHER II, and
GARY D. LEATHERMAN, and
ROBERT W. KREMER, and
MICHAEL R. KREINHOP, and
EDWIN L. KRAUSE, and
MICHAEL C. KOLLS, and
LARRY R. KEISER, and
DENNIS G. LEBIANC, and
JACK L. MARTIN, and
ROBERT T. MILLER, and
DANIEL S. MOORE, and

JOHN L. MOORE, and
WILLIAM E. MURRAY, JR., and
MICHAEL E. NALLEY, and
JAMES L. NELSON, and
KENNETH F. ROLAND, and
THOMAS HENRY REHLING, and
CRIS R. READ, and
RANDOLPH L. PRYOR, and
LARRY W. PIERCE, and
JAMES D. PHENICIE, and
WILLIAM C. PARTRIDGE II, and
REX A. ORCUTT, and
MICHAEL A. OSBORNE, and
ROBERT R. SCHULER, and
LANCE JOHN SEEVER, and
KENT MICHAEL SMITH, and
DONALD EUGENE SMOOT, and
JOHN N. STARKEY, and
JEFFREY S. STINSON, and
ROCKY L. STOTTS, and
MICHAEL R. TIMBERLAKE, and
KEVIN A. WILSON, and
MICHAEL J. WATERMAN, and
JAMES H. WALTERS, and
ALAN P. WALLING, and
DANIEL D. VERMILLION, and
RANDOLPH L. TRIER, and
RANDALL YABLONOWSKI, and
MICHAEL V. YOUNG,
as Indiana State Police Cadets and all as intervening defendants.

MEMORANDUM OPINION AND JUDGMENT

Prior to the commencement by the plaintiffs of their legal action on August 26, 1974, the incumbent Governor of Indiana committed the State to a policy of providing equal employment opportunity to all citizens of Indiana who seek employment with the State. The Governor sought to have State government endeavor to set the example for other employers, both public and private, in providing equal employment opportunity rights for minorities, women, the handicapped and older workers. This commitment, the Governor cautioned, did not mean that departments and agencies could be content with ending prior patterns of discrimination but that affirmative action programs must be developed that will seek out and involve minorities and women at every level of employment and decision making in State government. The Governor mandated that all citizens of Indiana must be allowed to compete on an equal basis for employment and advancement opportunities in the State service. On July 1, 1974 the defendant, Superintendent, certified that the Indiana State Police Department was formulating an Equal Opportunity Program in accordance with Volume 28 Code Federal Regulations Sections 42.301, et seq., Subpart E, and that the written program was on file in the office of the Indiana State Police Department, 301 State Office Building, Indianapolis, Indiana, for review and audit by officials of the cognizant State Planning Agency or the Federal Law Enforcement Assistance Administration, as required by relevant laws and regulations. The Project Plan For The Establishment And Implementation Of A More Effective Police Officer Selection Procedure For The Indiana State Police dated August 19, 1974 was prepared by Law Enforcement Manpower Research Project Industrial Relations Center, The University of Chicago. The project objectives spring from the statement in the plan that State police agencies are faced with the challenge of responding to rapidly changing conditions in the administrative and legal milieu in which they operate; in particular, in the personnel staffing process, recent court decisions,

including Griggs v. Duke Power Company, 91 S.Ct. 849, decided March 8, 1971 and administrative directives, make it clear that the "job-relatedness" of applicant screening procedures must be assured and documented; written tests used to screen applicants must be "validated" with respect to the entry job requirements of the agency if they are to be used at all; specific objectives of the proposed project are to develop a technically sound and effective personnel selection testing procedure which will be equitable to all applicants while maintaining if not enhancing current standards of on-the-job performance; to implement these procedures within the Indiana State Police, assisting in the initial application and developing the capacity within the agency to continue the use of the improved selection procedures; and to reinforce and develop the within-organization capacity to support a more effective staffing process and continued improvement of the Indiana State Police. The Project Manager named in such plan is John Furcon, Research Psychologist and Director, Law Enforcement Manpower Research, Project Industrial Relations Center, The University of Chicago. The published Indiana State Police Departments 1975 Plan included under the subject of Law Enforcement Training the statement of a need for improvement on selection procedures in that the Indiana State Police had become aware of a need to reevaluate its selection criteria, design instruments to fit its own particular needs, and implement new selection and promotional procedures; as is the case with most other police agencies, the Indiana State Police do not have the "in-house" capability of producing the base information, tests, and validation procedures required; that the establishing sets of selection criteria and the designing of testing implements for an agency which is as diversified and specialized as the Indiana State Police, the plan recited, will be difficult and time consuming; a program of several years duration will be required to produce the needed end result; and the plan recited that the Indiana State Police recognized that the long-run success of the Department is most critically dependent upon its human resources and being able to accurately identify those individuals, who are "best" suited to the multi-

faceted jobs of the Department can do nothing but result in the highest quality law enforcement service for the citizens of Indiana. The defendants' counsel argue that the action was ill timed in view of the good faith plans of the defendants and amounted to "getting into the act" of defendants' program. The plaintiffs' counsel's position is that there have been two training school classes in the year 1974 and another is planned for the mid-year of 1975 without completion of the implementation of the plans, and in fact the program was still unfinanced.

The issues were joined by the August 26, 1974 complaint as amended on August 29, 1974, as amended on September 16, 1974, as amended on December 10, 1974, as amended on December 11, 1974, and as amended on December 19, 1974, and as supplemented on November 13, 1974 and the answer of the defendants consisting of seven (7) defenses and filed on September 27, 1974. The action was advanced on the Court's calendar after the September 16, 1974 hearing and argument in the New Albany Division of this Court on the plaintiffs' motion for a temporary restraining order when such motion and the defendants; September 13, 1974 motion to dismiss as refiled on September 16, 1974 to the September 16, 1974 amended complaint were denied. The action on September 16, 1974 was set for trial on the merits November 21, 1974, the defendants were ordered to file their answer to the amended complaint within one (1) week, the parties were ordered to conclude all discovery by the end of October, 1974, and the parties were ordered to file weekly progress reports with the Court. Multiple pre-trial conferences were conducted. The parties stipulated to vacating the trial date of November 21, 1974 which was approved and the trail was rescheduled for December 9, 1974. Discovery time was also extended at the request of the parties to December 2, 1974. On November 27, 1974, the parties stipulated to sever and the Court approved the severance of the issues of the trial scheduled for December 9, 1974 to whether the defendants have in the past maintained or currently maintained hiring practices which are in violation of the statutes set forth in the complaint.

The plaintiffs filed a motion on October 11, 1974 to require the defendants to notify the Indiana State Police Cadets of the pending litigation in that such will affect them in that they are scheduled to complete their training and be appointed as probationary troopers on December 15, 1974 among other things, which motion was granted. On November 1, 1974, Kenny Ray Adams and sixty-four (64) other Indiana State Police Cadets filed their joint motion to intervene which motion was granted under Rule 24(a) of the Federal Rules of Civil Procedure.

The plaintiff, Bruce Bailey, is a negro citizen of the City of Gary, Lake County, State of Indiana, and the United States of America. Mr. Bailey was an applicant for the position of State Trooper with the defendant, Indiana State Police Department, in the years 1972 and 1973. Mr. Bailey failed to pass the defendant's written examination (Otis Gamma Form C test). The plaintiff, Indiana State Conference of Branches of the National Association for the Advancement of Colored People (NAACP) is an unincorporated association. The aims and purposes of the National Association for the Advancement of Colored People are to secure and maintain the elimination of all racial barriers which deprive citizens who are colored people of the equal privileges and burdens of equal citizenship rights in the United States of America. One of the primary goals and purposes of the National Association for the Advancement of Colored People is the elimination of racial discrimination in employment, thus making it possible for colored people to have an equal opportunity for employment. The National Association for the Advancement of Colored People alleges that certain racially discriminatory employment practices of the defendants have resulted in serious harm and injury to the individual members of the National Association for the Advancement of Colored People in Indiana because they have been denied employment, discouraged from applying for employment because of the alleged known discriminatory practices, and denied equal opportunity for advancement. The National Assocation for the Advancement of Colored People brings this action in the interests of these members and all others similarly situated that the National

Association for the Advancement of Colored People represent. The other parties plaintiff in the class action have already been identified in this entry and defined as those colored people who are negro and other minority persons, it is alleged, who have been denied, who may seek, and who (but for the alleged discriminatory practices and reputation of the defendants) would have sought employment or promotion as employees of the Indiana State Police Department.

The defendant, Robert L. DeBard, is a caucasian citizen of the State of Indiana and the United States of America and was on October 1, 1973 duly appointed the Superintendent of the defendant, Indiana State Police Department. Mr. DeBard has continued in such capacity since his appointment to the time of trial. The defendant, DeBard, (in all capacities) since the filing of the action on August 26, 1974, has voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action.

The defendant, Richard Jones, is a caucasian citizen of the State of Indiana and the United States of America and was in the year 1968 duly appointed the Personnel Director of the defendant, Indiana State Police Department. Mr. Jones has continued in such capacity since his appointment to the time of trial. The defendant, Jones, (in all capacities) since the filing of the action on August 26, 1974, has voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action.

The defendant, Indiana Police Department, is the State agency referred to in the Indiana statutes in this entry and on August 26, 1974, when this action was commenced, the duly appointed members of such Board were Normal R. Reeves, David J. Allen, E. William Schilling, Garth Whipple, John Kendall, and John Zentz all of whom are caucasian citizens of the State of Indiana and of the United States of America. The defendant, Board, the defendant,

Board members, and as individuals since the filing of the action on August 26, 1974 have voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action. This Board consists of six (6) members, not more than three (3) of whom must belong to the same political party to be selected and appointed for a given term by the Governor of the State of Indiana, each from six (6) different statutorily defined geographical regions of the State of Indiana. The administration, management and control of the Indiana State Police Department, along with other powers and duties, is vested in this Board. This Board is empowered to fix the salaries and compensation of the several police employees, with the approval of the Governor of the State of Indiana.

The defendant, the Indiana Law Enforcement Training Board, is the State agency referred to in the Indiana statutes in this entry and on August 26, 1974, when this action was commenced, the duly appointed members of such Board were Robert L. DeBard (ex officio), Ivan H. Brinegar, Robert R. Brown, Emergy M. Bunnell, Harold Lasage, William F. Lawler, Jr., Lee E. Miller, Grover C. Osborn, James R. Peva, George F. Rapp, and George W. Wise all of whom are caucasian citizens of the State of Indiana and of the United States of America. The defendant, Training Board, the defendant, Training Board members and as individuals, since the filing of the action on August 26, 1974 have voluntarily maintained a status quo awaiting the results of this case so advanced on the calendar and awaiting the results of pending studies of changes in the areas complained of in this action. This Training Board must consist of fourteen (14) members all appointed by the Governor of the State of Indiana, two (2) county sheriffs (one from a county of over fifty thousand (50,000) population and the other under such population), two (2) chiefs of police (one from a first or second class city and the other from a third or fourth class city), one (1) prosecuting attorney, one (1) judge of a circuit, criminal or superior court exercising criminal jurisdiction, one (1) representing

professional journalism, one (1) representing the medical profession, one (1) representing education, one (1) representing business and industry, one (1) representing labor, one (1) representing the Indiana Municipal League, and the Superintendent of the Indiana State Police Department serves ex officio as chairman of this Board. It established a non-voting advisory council consisting of the Special Agent in Charge of the Federal Bureau of Investigation field office covering the State of Indiana, the Attorney General of the State of Indiana, the Administrative Director of the Indiana Commission on forensic sciences, one (1) member representing theology, to be appointed by the Governor, and the Superintendent of the Law Enforcement Division of the Department of Natural Resources of the State of Indiana. It was the duty of this Training Board to adopt all necessary Rules and Regulations to carry out the provisions of the 1967 Act. Such Rules and Regulations were required to be adopted after necessary and proper investigation and inquiry by the Training Board and were made effective July 6, 1972.

The case was called for trial on December 9, 1974.

An oral motion, preliminary to trial's commencement intervened, was made by the plaintiffs to require a December 1, 1974 deposition witness, Geneva Anne Coffman, to answer certain questions which was denied.

An evidentiary hearing and argument on the December 5, 1974 third party petition of Lary D. Stoller, an Indiana State Police Officer on behalf of himself and all other incumbent officers to stay the examination of pre-employment investigation reports of Indiana State Police personnel also intervened preliminary to the trial's commencement. Mr. Stroller's petition was granted in part and denied in part, a formal entry of which ruling is separately entered of record under date of March 5, 1975.

Also preliminary to the trial's commencement there was an evidentiary hearing and argument conducted on December 10, 1974 on the request of the plaintiffs' motion to establish a class action. The Court finds that the plaintiffs bring this action on their own behalfs and, pursuant to Rule

23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of all others similarly situated. The class is composed of all black and other minority persons who have been denied, who may seek and who it is alleged (but for the alleged discriminatory practices and reputation of the defendants) would have sought employment or promotion as employees of the Indiana State Police Department. The Court finds that the class is so numerous as to render joinder of all members impracticable. There are questions of law and fact common to all members of the class. The Court finds that the plaintiffs have competent counsel who are financed and will fairly and adequately represent the interests of the class, and their claims are typical of the claims of the other members of the class. The Court further finds that plaintiffs alleged that the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole should the class prevail in this action.

Also preliminary to the trial's commencement was the December 10, 1974 oral motion of plaintiffs to file the third amended complaint which was granted and such amendment was formally filed December 11, 1974. The defendants oral motion to strike the third amended complaint was denied after argument. The plaintiffs further orally amended their complaint by striking the claim for back pay for members of the class other than the named plaintiffs with permission for plaintiffs to later move for further amendment.

Also preliminary to the trial's commencement was the evidentiary hearing on the plaintiffs' December 5, 1974 motion for preliminary injunction which hearing December 11, 1974 was concluded with arguments on December 12, 1974 and the matter was taken under advisement. On December 13, 1974 the motion for preliminary injunction was denied insofar as it was directed at the defendants' appointment of the sixty-five (65) intervenor defendants as Indiana State Police Cadets and their right to accept such appointment to the Indiana State Police. This December 13, 1974 bench ruling is the subject of a separate entry dated March

1975. The matter of the Court's final ruling was continued under advisement pending the trial on the merits.

The trial commenced on December 11, 1974 and continued from day to day thereafter until December 19, 1974 when the plaintiffs rested. The defendants, at the conclusion of all of the plaintiffs' evidence, orally moved to dismiss under Rule 41(b) of the Federal Rules of Civil Procedure on the ground that the facts and the law the plaintiffs have shown no right to relief requested in the eight (8) counts of the complaint. The motion was granted in part and denied in part on December 19, 1974. The findings of fact and conclusions of law as to this Rule 41(b) motion are included in this entry on all issues. It is to be noted that at this point in the trial that the plaintiffs further amended their complaint by withdrawing any claims against defendants concerning their use by defendants of age, height, high school diploma or equivalent and possession of a valid motor vehicle operator's license as qualifying criteria for each applicant for the position of State Trooper and further withdrew any claims against defendants in the employment of the "limited police" class of defendants' employees and of the "civilian employees" class of defendants' employees, except for plaintiffs' claim that the enforcement by defendants of the Indiana statute which prohibits the appointment of adherents of any one political party to a rank, grade or position in all department positions which contains employees more than half of whom are adherents of that same political party.

The State of Indiana was the twelfth (12th) State to organize a State Police Department. In the year 1921, a State Department of Motor Vehicle Police was created under the office of the Secretary of the State of Indiana. Sixteen (16) deputies were empowered to enforce motor vehicle certification of title regulations and the vehicle taking laws of the State. Four (4) years later, in 1925, these deputies were given power to enforce some of the traffic laws. An accident reporting and recording system was begun in the year 1927.

The Indiana State Police of today was created as a result of the public demands of the early 1930's. There were many reasons for expanding the existing State Police System, included among such reasons was the irritating public experiences from an era of political excesses, the substantial increase in communications and use of the public highways due to the increased use of the motor vehicle, and the increase of crime by marauding and nomadic criminals. James M. Ogden, the Attorney General of the State of Indiana as Indiana's Chief Law Officer from 1928–1932, was one of the many citizens and officials who urged the creation of a State Police Force. Because of his official position his recommendations and plea for assistance from others to establish a State Police Force was recorded in a 1930 address to the Indiana State Bar Association.[1] Indiana at this time

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[1] "***. The members of the bench and bar can remedy the hardship brought about in the administration of justice through politics. In this matter I desire to quote from an Article by Professor Raymond Moley of the Department of Law, Columbia University. He said: 'The startling crime rate in the United States is probably due to defects in the administration of justice. And wherein the administration of justice fails to work smoothly, it fails because it is compelled to operate under the handicap of politics. From arrest to conviction, from sentence to release, political influences are present, and wherever they are present they are pernicious.'

We have heretofore noted that one of the most active causes of crime today is that we do not capture the criminal after the crime has been committed. We have seen that out of the 14,000 major crimes committed over a certain period at a certain place the criminal profession would seem to be comfortably secure. This causes the crime to increase and flourish for the criminal rests in the satisfaction that his chances of capture and conviction are very remote.

One of the most effective means of coping with this condition is an efficient state police. Such police organizations as the Pennsylvania State police, the New York State troopers and the Texas rangers are effective. They are so organized that it is an honor to be a member; they attract young men, who receive intensive training and instruction. Under such a system the police profession is an honorable one. But to make it such the salaries of the police must be raised and pensions and insurance must be provided for them and their families. The applicants for admission to such a force should be compelled to meet

was seriously in need of more general police protection outside the larger Municipalities where only an elected county sheriff served the nonurban areas of the ninety-two (92) counties of Indiana. Also there was a growing serious need for policing motor vehicular traffic in all counties of the State. The 1930 United States Census discloses that Indiana's population was three million two hundred thirty-eight thousand five hundred three (3,238,503) of which ninety-six and five tenths (96.5) per cent were caucasian, three and five tenths (3.5) per cent were negro, and no registered percentage of other minorities. The Census also discloses the dispersion of the citizens and location of the minorities which when considered with the knowledge of which are the States large cities it is evident that the negro population was then concentrated in the cities.

The Indiana General Assembly reacted to the public urgings and created an Indiana State Police force in 1933. A review of the 1933 Act of the Indiana General Assembly as it has been amended, supplemented and as reenacted in its sessions to this date shows an unswerving continuous fulfilling of the objective of the citizens of Indiana to provide an adequate, up-to-date, highly trained Indiana State Police force for the citizens of Indiana. These legislative acts created a State Police Department, a State Police Board, the office of superintendent, provided for the organization and maintenance of a training school for police employees of the department and specifically providing that no police employee shall be assigned to regular active duty until he shall have received training and successfully passed

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severe tests physically, mentally and morally, before being admitted to modern and thorough schools of instruction.

Scotland Yard of England, and Surette in France, and the Canadian Mounted Police in the last named country are governmentally maintained organizations of exports that know how to gather evidence, catch the criminal and procure his conviction.

The latest report available pertains to the Pennsylvania State police. *** Major Lynn G. Adams, superintendent of that force issued the following statement: 'The adequate policing of any community is one of the best deterrents to criminal deeds.' ***." Volume 6 Indiana Law Journal page 10.

the course for probationers prescribed by the superintendent; training courses, other than the probationers, were also required to be prescribed and conducted by the superintendent for all police employees of the State Police Department; the act provided that the superintendent and Board be filled by the Governor of the State of Indiana in accord with the laws' stated qualifications; the act provided that the superintendent, with the approval of the Board, shall have authority to formulate and adopt and put into effect such rules and regulations for the government of the department; the act provides that the superintendent, with the approval of the Board, establish a classification of ranks and grades and positions in the department, and for each rank, grade and position he shall designate the authority and responsibility within the limits of the act and the superintendent sets the standards of qualifications, in conformity with the most approved plans and standards adopted in other states, dominions and provinces, and he fixes the prerequisites of training, education and experience, and the superintendent, with the approval of the Board, from time to time, in accordance with the rules and regulations promulgated by him, designates the rank, grade and position, to be held by each employee of the department, until such person be designated by him to hold another rank, grade or position, and he has authority to assign and reassign each employee of the department to serve at such stations, and within the limits of this act to perform such duties as he designates; the act provided that the superintendent, with the approval of the Board and subject to appropriations and the requirement for training, appoint such personnel to the ranks, grades, and positions of the department and such appointments be made in such manner as to create and maintain in such ranks, grades, and positions so that not more than one half (½) of the personnel are adherents of any one (1) political party; the Act provides that the superintendent devise and administer examinations designed to test applicants in the qualifications required for the rank, grade or position, and only those applicants be appointed who best meet the prescribed standards and prerequisites; the Act provides that all employees appointed to the department be

probationers and on probation for a period of one (1) year from the date of appointment which statute may be extended for any period not to exceed one (1) year; the Act makes it a misdemeanor for any employee to participate in any manner in political campaigns for public office; the Act provides that the superintendent may discharge, demote or temporarily suspend any employee for cause in a prescribed method and procedure and with other due process safeguards to the employee, except that no employee can be demoted, discharged, temporarily suspended or disciplined because of political affiliations, nor can such action be carried out after his probationary period, except that probationers are accorded a right of hearing; such Act, among other things, provided for the creation of a bureau in the department known as the Bureau of Criminal Identification And Investigation and required it and all local law enforcement officers and penal institutions to cooperate and assist each other; and the Act further provided for the superintendent to supervise the conducting of courses of training programs in semiannually conducted conferences at the several State police posts for law enforcement officers, trainees and applicants, of the rural political subdivisions of the State, the courses to include instruction in detection, pursuit, apprehension, and conviction of criminals, as well as safety instructions and first aid assistance, together with such other subjects deemed appropriate by the superintendent. In 1971 there was an Enforcement Section established in the State Police Department and it was charged with the enforcement of the Motor Carrier Act of 1935 as amended on behalf of the Public Service Commission of Indiana. In 1971 there was created a Criminal Justice Data Division in the Indiana State Police Department. Previously in 1937 a legislative Act enabled the Department of State Police to establish and operate a pension program for eligible employees.

In 1967 there was created a Law Enforcement Officers Training Academy. It provided for an Executive Director and a Board of which the Superintendent of the Indiana State Police Department is ex officio chairman. This Act is construed as supplementary to the Indiana State Police Act

as amended. In order to insure the public safety and general welfare of the people of the State of Indiana and to promote equity for all segments of society a program of mandatory training for law enforcement officers was established by this Act. It provided that the Act be interpreted so as to achieve such purposes through the establishment of minimum standards in law enforcement training. The intent of the Act is to encourage all law enforcement officers, departments and agencies within this State to adopt standards which are higher than the minimum standards implemented in the execution of this Act and such minimum standards are in no way to be deemed sufficient or adequate in those cases where higher standards have been adopted or proposed.

Such laws extended police duties and powers to the officers and police employees of the Indiana State Police Department by vesting them with all necessary police powers to enforce the provisions of the laws of the State of Indiana for the regulation and use of automobiles, motor vehicles and other vehicles, and the laws for the safeguarding and protection of the surface or other physical portions of the highways of the State of Indiana, and without writ or warrant for violation thereof when committed in their presence. Such laws also extended the duty of police employees of the department to prevent and detect crime, to apprehend criminals, to enforce the criminal and traffic laws of the State, and to perform such other related duties as may be imposed upon them by the laws of the State, and to this end, police employees of the department became peace officers and have in any part of the State the same powers with respect to criminal matters and the enforcement of the laws relating thereto as sheriffs, constables and police officers have in their respective jurisdictions, and have power and authority to act as agents for the State of Indiana on return of parolees, fugitives from justice and persons extradited to Indiana for crime; and any warrant of arrest or search warrant issued by proper authority of the State may be executed by any police employee of the department in any part of the State, according to the tenor thereof, with-

out endorsement. They are subject to the call of the governor, and the governor may, from time to time, assign to the department such other police duties as the executive department may deem advisable or necessary, including the duties now performed by deputy fire marshals; they have full power to arrest, without warrant, any person committing or attempting to commit in their presence or view a breach of the peace or any other violation of any of the laws of the State of Indiana; and, under order of the superintendent, they are empowered to cooperate with any other department of the State of Indiana or with local authorities. They cannot exercise their powers within the limits of any city in labor disputes, nor to suppress rioting and disorder except by direction of the governor, or upon the request of the Mayor of any such city with the approval of the governor; and without the limits of any city of the State they cannot exercise their power and authority in labor disputes except by direction of the governor, or the request of the judge of the Circuit Court of the County with the approval of the governor.

Only those applicants who meet initial standards have been and are considered for the position of trooper. These initial standards in effect since December 13, 1963 as amended April 13, 1971 by rule and regulation of the Indiana State Police Board require that the applicant must be a citizen of the United States of America; must be twentyone (21) years of age but not yet thirtyfour (34) years of age as of the opening date of the preduty training school applied for, and must be less than thirty-five (35) years of age when appointed as a police employee, except that the superintendent with the approval of the State Police Board has the authority to recruit police employee applicants between the ages of nineteen (19) and twentyone (21) years who otherwise meet all qualifications for the position of police employees, in order that the State Police Department may hire such applicants in nonpolice vacancies until they reach age twenty-one (21), at which time they would be eligible for, but not guaranteed, an appointment to fill a police vacancy, pursuant to the approval of the superintendent and Board as provided by law; must be

at least sixty-nine (69) inches, and not more than seventy-seven (77) inches, in height, without shoes; must have a weight in proportion to the applicants height in accordance with accepted height in accordance with accepted medical standards; must be a high school graduate as evidenced by a diploma issued by an accredited high school or an equivalency diploma issued by an accredited high school is acceptible; must possess a valid driving license; must be willing, if appointed, to reside and serve any place within the State of Indiana, as designated by the superintendent; and must be willing, if accepted, to refrain from participation in any manner in political activity, except by voting.

The applicants meeting such initial standards have been and are eligible to compete in the remaining steps in the selection procedure. Such procedure included the selection only of the higher graded portion of the applicants as evidenced by intelligence and other tests according to predetermined standards fixed by the superintendent, with the approval of the Indiana State Police Board; the selection only of those applicants whose character, reputation and temperament are judged fit for police duty, as determined by an investigation conducted by Indiana State Police Department personnel; the selection only of those applicants who are found to conform to the physical standards prescribed by the superintendent and the Indiana State Police Board as evidenced by a physical examination conducted by a competent medical doctor retained by the Indiana State Police Department; the selection only of those applicants whose poise, appearance and attitude would make them suitable to contact the public as police officers, as determined by individual interviews by an interview board appointed by the superintendent and comprised of Indiana State Police Officers in the grades of Lieutenant and above; the selection only of those applicants who have been assigned by the superintendent to a preduty training school and who attend such school and subject to the right of the commander of the training division, with the approval of the superintendent, to dismiss applicants assigned to such school at any time; and the selection only of those applicants who have competed in a personal interview with the

superintendent and the Indiana State Police Board, following which the applicants may be appointed to the Indiana State Police Department, placed on a reserve list for the filling of future vacancies or dropped from further consideration as prospective police employees.

The defendants and its agents and employees conduct is subject to the requirement that no applicant or employee shall be discriminated against, or favored, with respect to the applicant's or employee's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of the applicant's race, color, religion, national origin or ancestry. Each applicant and employee will be limited only by the applicant's or employee's own abilities and qualifications, and the department will endeavor to select, hire, and maintain in its employ only the best qualified persons available for any particular position.

In keeping with such statutes all police personnel have been and will be appointed to the Indiana State Police Department by the superintendent with the approval of the Indiana State Police Board, and then only after satisfactory completion of the selection and training procedures prescribed by the superintendent and Indiana State Police Board and such applicant not having arrived at the age of thirtyfive (35) on the date of appointment. Such police appointments have been made for a probationary period of at least one (1), but not more than two (2), years during which the probationer may be discharged by the superintendent without the right of hearing before the Indiana State Police Board. All permanent police appointments have been and will be appointed by the superintendent and the Indiana State Police Board upon satisfactory completion of the probationary period. All police appointees before employment have been and will be required to sign a statement upon their oath or affirmation attesting that they are not now and have never been a member of, or otherwise affiliated with, any organization, association, or body which advocates the overthrow of the United States government or its several subdivisions by force or violence or illegal means. It is a condition of employment of police personnel that they

may be transferred from one bureau, division or area to another only by the superintendent according to the needs of the Indiana State Police Department, as outlined in the orders of such department.

In keeping with such statutes the promotion of police employees to a grade, position or classification below the grade of captain or equivalent have been and will be accomplished by the personnel officer publishing within the Indiana State Police Department to each bureau, division, area and district commander of an existing vacancy includes the minimum qualifications for said vacancy, as determined by the Personnel Board, and a deadline date for expressions of interest in such vacancy. Each commander after notice of such vacancy is required to notify through channels all members of his command who meet the minimum requirements for such vacancy. All persons meeting the minimum qualifications for the vacancy and who successfully pass any prescribed screening examination, have been and will be interviewed by the Personnel Board or by a committee selected by the Personnel Board. After such interview the Personnel Board considers all other information concerning the persons interviewed which is available to it, and with due consideration for the requirements of the position to be filled, it will make its recommendation to the superintendent. After considering the recommendations of the Personnel Board, the superintendent will designate the person to be promoted, subject to the approval of the Indiana State Police Board. Unless an exception is made by the superintendent, with the approval of such Board or a spot assignment, or temporary appointment, is made by the superintendent, with the approval of such Board, no police employee is eligible for promotion into a line command position, until such time as such employee has completed five (5) years' service with the Indiana State Police Department as a police employee, and no promotion can be made into a specialist until the completion of three (3) years' service as a police employee. When vacancies in the various grades of the Indiana State Police Department occur, a basic requirement for eligibility for promotion is that the applicant shall have held a grade not less than two

(2) grades below that of the vacancy, for a period of not less than one (1) year. In keeping with such statutes the promotion of police employees to the grades of captain, or equivalent and above, have been and will be made by the superintendent subject to the approval of the Indiana State Police Board.

Effective July 6, 1972 the Law Enforcement Training Board adopted, in accordance with the 1967 Act creating it, certain rules and regulations. All law enforcement officers appointed by the State of Indiana were required to complete the minimum basic training course prescribed by the Law Enforcement Training Board. Such training course could be taken at a central training facility provided by the Law Enforcement Training Board or at any Training Board approved school or academy utilizing approved instructors, courses of study, attendance requirements, equipment and facilities. (Under certain standards training may be had at a school elsewhere than the Training Boards central training facility.) The Executive Director of the Training Board is required to establish, and appply uniformly to all persons attending Training Board approved basic training schools, a minimum passing score of seventy (70) per cent for the academic phase of the basic training course. The failure to attain such passing score for the basic training course constitutes grounds for discharge on the basis of incapacity or incompetency. A person failing to achieve such passing score need not be discharged if the officer, agency, or department employing such person obtains approval from the Executive Director for such person to re-take the basic course at the earliest opportunity. If such person fails to achieve a passing score for the second time, he will not thereafter be eligible for admission to a basic training school. The minimum standards of physical, educational, mental and moral fitness governing acceptance for training established by the Training Board required that the applicant for trooper shall have reached the age of twentyone (21), unless the employer employs enforcement officers at a lesser age; the male applicant must not be less than one hundred forty (140) pounds in weight, without clothes, and the weight must be in proportion to the height and build;

the applicant must possess an acuity of vision correctable to twenty-thirty (20–30) or better in each eye (any applicant possessing uncorrected visual deficiency to such an extent that, in the opinion of the examining physician, he would be unable to safely perform police duties in the event of temporary loss of corrective glasses or lenses, shall be unacceptable), and he must have the ability to distinguish the colors of red, green and amber and have no pathology of the eyes; the applicant must be free from any major impediment of the senses; the applicant must be a high school graduate as evidenced by a diploma issued by a high school accredited by the department or agency of a State authorized to accredit high schools, or an equivalency diploma issued by such an accredited high school; the applicant must possess a valid driving license from the State of residence; the applicant must be of good reputation and character which must be investigated by the Indiana State Police Department in the form and manner as prescribed by the Training Board and the results shall be retained in written form for inspection by the Training Board or its authorized representative; the applicant must not have been convicted of a felony or any crime involving moral turpitude; the applicant must be fingerprinted and a search made of local, State and national fingerprint files to disclose any criminal record and the fingerprint cards and any identification records shall be retained for inspection by the Training Board or its authorized representative; the applicant must be given a Training Board approved intelligence quotient test or examination and shall achieve a minimum intelligence quotient equivalent to ninety (90) on the Otis Gamma C test; the applicant must not be dishonorably discharged from military service and a discharge other than honorable may be grounds for rejection in accordance with the standards for requirement of the standards for good reputation and character and the standards for physical, emotional and mental fitness; and the applicant must be examined within one (1) year prior to acceptance for training by a physician (other than the applicants physician) who has an unlimited license to practice medicine who will aid in determining that the applicant is physically, emotionally and mentally fit

for normal police functions, and in addition to the standards for height and weight for male applicants and the standards for good vision and unimpaired senses of all applicants the applicant must satisfy the minimum medical fitness standards for retention of personnel in the Army of the United States of America, the results of which examination shall be retained in written form for inspection by the Training Board or its authorized representative and a copy of the report of the physical examination shall be presented to the Training Board prior to acceptance for training at any approved academy.

The minimum standards prescribed by the rules and regulations of the Law Enforcement Training Board, effective July 6, 1972, for courses of study for approved town, city, county and State law enforcement training schools for basic training courses consists of two hundred forty (240) classroom hours covering the subject matter of academy introduction and orientation, police-community relations, agencies and their jurisdiction within the criminal justice system, law enforcement ethics, criminal law and procedure, law enforcement and investigative techniques, civil process, psychology and sociology, traffic control and enforcement techniques, criminalistics and forensic sciences, first aid, defensive tactics, and proper use of firearms. The minimum classroom hours and subject matter may be increased by the Training Board. The Executive Director of the Training Board or his designate must first review and approve of lecture outlines and other course material used to satisfy the requirements and a copy must be filed and retained by the Training Board. The minimum qualifications for instructors at approved law enforcement training schools established by the Training Board, effective July 6, 1972 require that the Training Board through its Executive Director must certify instructors deemed qualified to teach in one or more of the prescribed training courses, that is, the instructor is certified on the basis of minimal qualifications in the areas of education, training and experience—instructors for professional police subjects, must have a minimum of five (5) years of law enforcement experience, a minimum of high school graduation or the equivalent, and

educational and experience requirements may be waived in unusual circumstances by the Training Board; instructors for general subjects, may be certified on the basis of their individual qualifications. The Law Enforcement Training Board by rule and regulation also provided for minimum standards of training and minimum standards for troopers for the use of an average speed computer as an enforcement tool. Effective July 1, 1970 all law enforcement officers who use an enforcement tool device installed in an automobile (excluding the tachometer, speedometer, radar, and electric speed timer using a hose or similar actuating device) which either mechanically or electronically computes average speed from the quantities of distance and elapsed time shall have successfully completed training in the theory and operation of such device of at least three (3) hours of class room, lecture-type instruction, including, but not necessarily limited to the subjects of scientific principles upon which device and method are based, the mechanical or electronic operation of the device (in layman's terms), methods of calibration, or checking the device for accuracy, techniques of using the device as an enforcement tool, and presentation of evidence and proper testimony in a trial involving the device and speed computing method; must complete three (3) hours of field demonstration and instruction by a trained certified proficient operator; must complete a period of eighty (80) hours on routine traffic patrol in a vehicle equipped with such device during which time he must practice the use of the device but shall take no enforcement action for violations based on the use of the device; and after such eighty (80) instruction hours of practice such trooper is then eligible for a field test in the use of the device, the standards for which are prescribed, and if successful may be certified for such duties.

The legislative authorized budgets disclose a modest State Police force in the beginning but it has grown substantially so that on August 26, 1974, when this action was commenced, the total work force (including police, limited police, and civilian employees) of the Indiana State Police Department was about one thousand three hundred forty (1,340) of which about nine hundred thirtyseven (937) were

uniformed troopers and higher ranking officers. There were nine hundred thirteen (913) police employees as of November 8, 1974, three (3) of whom were negro (the first negro trooper was employed in 1962) and the rest of the complement were on that date caucasian. Authorizations and appropriations have been made allowing the Indiana State Police Department to increase the complement of the police employees to nine hundred ninety-eight (998). The 1970 United States Census discloses that Indiana's five million one hundred ninety-three thousand six hundred sixty-nine (5,193,669) of which ninety-two and eight-tenths (92.8) per cent were caucasian, six and nine-tenths (6.9) per cent were negro, and one-tenth of one (0.1) per cent were other minorities. The Census breakdown by counties also discloses the dispersion of the citizens and geographic location of the minorities and caucasians which when considered with the knowledge of which of the cities are Indiana's large cities it is evident that the negro population is still concentrated in the cities as it was in the 1930 census. During the agencies existence there have been four (4) negro troopers, the first negro trooper was employed in the year 1962.

Prior to the year 1970 the defendants did not actively or officially recruit applicants of any race for the position of trooper except to announce, through the media, that the defendants were taking applications. The Public Information Office of the Indiana State Police Department has endorsed and supported the Kiwanis Clubs of Indiana's conducting of summer camps for underprivileged young people who would not normally be able to afford such camps. The planned agenda of such camps exposed to such young people, among other things, the Indiana State Police Department. The objective of such exposure has been to give them a picture of what the Indiana State Police Department is like and to encourage their future application for the position of trooper. The Indiana State Police Department considered the Public Information Office's efforts in such career camps as a recruiting process. However, the defendants were benefited through the years by a substantial group of applicants from those sections of the State with little or no negro population. These applications resulted from

the good "image" and public relations naturally and consequentially resulting from the public's approved performance of duty of all of its working police personnel in such sections of the State. In addition, as in all police forces, there were the applicants who were related to or were family friends of the employees of defendants. The defendants are primarily a rural police organization and relatively have only a small amount of contact with the citizens of the large cities. The quantity of negro applicants for the position of trooper in Indiana has been small. This compares with other States experience. The reasons for this are many. In the cities a negro who desires to be a police officer chooses the City police force of the city of his residence because of the image of such City police officers on the local force in his community and on the other hand the lack of knowledge of the actual duties of the State trooper and the lack of desire to leave his social surroundings for duty in some far off rural section of the State; the competition of industry for the labor force in the cities also has affected the quantity of applicants from the cities, including negros; the hazards and risks to the occupation of a police officer also is a deterent to the quantity of qualified applicants from the cities where such happenings to police officers receive intense publicity; in recent years there has been intense publicity of a degrading nature that affected all organized police forces, which era has been referred to as the "PIG" years as the advocates of causes publicly ridiculed law enforcement throughout the United States as "PIGS"; the negro population in Indiana has to some extent concluded that the department is maintaining a racially discriminatory hiring practice and the low number of negro troopers is very convincing to that group of people, this was greatly aggravated in recent times (when defendants have been trying to launch an affirmative program of minority recuriting) when the plaintiff association prior to the bringing of this action mistakenly charged a trooper of the Indiana State Police Department with racial misconduct in the filling out of an arrest ticket for a negro operator of a motor vehicle in a small community in Lake County, Indiana. The plaintiff association publicly demanded a hearing before the Indiana

State Police Board which demand was publicly reproduced in media of the major cities of Indiana. The representatives of the plaintiff association appeared before the Indiana State Police Board in a public hearing. It then disclosed that the arresting officer was not an employee of the Indiana State Police Department but was a law enforcing officer of a small community in Lake County, Indiana. The leaders of the plaintiff association sincerely apologized for the mistake but it is a recognized fact that in public life, and such is the status of the defendants, the explanations never erase the accusations. This incident and the commencement of the instant action together with the fact that there are only three (3) negro troopers in the complement of the Indiana State Police Department has established in the minds of substantial of the negros in Indiana that the present leadership of and the Indiana State Police Department is now maintaining a racially discriminatory hiring practice. The plaintiff produced a witness from New York City, a New York City police officer, who recounted the intense recruiting in New York City by the New York State Police Department for applicants from the minorities in that City for the position of New York State trooper. Despite these massive recruiting efforts by the use of negro recruiters, interested groups, publicity and a well-financed program with adequate staff the net result was the employment of one (1) State Trooper from New York City. The New York State Police Department's experience caused it to conclude that those negros in New York City who could qualify for employment as a trooper did not apply. It concluded that the qualified negro of that City did not apply because of his dislike for the working conditions of a New York State Police Department trooper and does not want to leave New York City as he would be required to do. The Indiana State Police Department between 1971 and 1974 made recruitment efforts with emphasis on minority citizens. In 1971, two negro troopers were assigned about one month prior to the close of applications to recruit negros to apply for the position of trooper. The crash effort consisted of some news releases and four (4) recruiting sessions, two (2) at Gary West High School and two (2) at Indianapolis

Shortridge High School. Over one hundred (100) applications were distributed to negros through these efforts. The number of negros applying increased in 1971 by fortyfive (45) to fifty (50). The negro recruiters were never informed by the defendants as to the success of their efforts, that is, how many negros actually applied to take the examination for trooper in 1971. There were no meetings or discussions of any kind with defendants as to the recruiting efforts. The defendants did not formulate any written policy with regard to minority recruitment. No budget was allotted for such recruitment. No apparent interest was generated in minority recruitment until on June 15, 1972, about two (2) weeks after the application period opened, the two negro troopers of who experienced the 1971 recruitment were again requested to recruit minority applicants. They agreed to do so after the superintendent, a predecessor of the defendant, superintendent, promised department support, including the promise that a tally would be kept of negros at all stages of the selection process. One (1) of the negro troopers was relieved of his police road assignments and was allowed to spend six (6) weeks on the recruiting assignment with two (2) other negro troopers were made available for special assignments. Seventyseven (77) negros, ten (10) spanish american, four (4) women, and seven (7) caucasians were given applications during the recruiting sessions held by the three (3) negro recruiting troopers. The recruiters were not informed as to the number of negro applicants, nor as to why each negro was rejected in the selection process as promised. The full time recruiter submitted a written summary of the minority recruiting effort with ten (10) recommendations to the department on September 7, 1972. Such superintendent acknowledged the memorandum but no meetings or discussions were ever held to evaluate the recruiting effort of 1972 until April of 1973 when a meeting to discuss and appraise minority hiring practices of the department was called by the Indiana State Police Board. There were approximately fortyfive (45) to fifty (50) negro applicants in 1972. The recruiting negro troopers were advised by the personnel officer that they had failed in their recruiting efforts in that their efforts had only a negligible

impact on the number of applicants. The recruiting troopers were unable to respond as they did not possess evaluation facts but pointed out that no negros had ever been involved in the selection process. After this meeting there were no further discussions of minority recruiting with such negro recruiting troopers. In the fall of 1972 such full time negro recruiter was asked to do character investigations of applicants for troopers and he refused because in his opinion the department had taken no meaningful steps with regard to minority recruitment. This trooper did not thereafter participate in recruiting efforts of defendants. Late in 1973 in preparation for the 1974 training class the department decided to institute a general recruitment program. Under this program, at least one (1) officer was assigned to the general recruitment for approximately two (2) months prior to the examination deadline. The recruiters one (1) of whom was a negro, were given no specific instructions on the recruiting minorities other than to recruit negros, "if they were available" and to keep the names and addresses of any minorities or women to whom they gave applications. A total of one thousand five hundred eightyfive (1,585) applications were distributed during the recruitment drive. Of that number of applications distributed, twentynine (29) were given to negro males, three (3) to negro females, twenty (20) to caucasian females, one (1) to a spanish individual, and the balance to caucasian males. The only minority recruitment effort made as to the 1973–74 train-class of January 1974 was through a small number of newspaper advertisements, which stated for the first time that the department was an "Equal Opportunity Employer." Two training classes were conducted in 1974, the first was in January 1974, the recruitment for which was referred to above, and the second class was in September of 1974 the applicants for which were obtained under the same method of recruiting. For these two (2) training classes for troopers positions the department received applications from a total of one thousand eight hundred (1,800) persons of which less than three (3) per cent were negro. The Minority recruitment programs of 1971–1974 were inadequate and could not compete with the "Image

Recruitment," as hereinbefore explained from which the department benefits but which attracts caucasians as applicants for trooper positions. A properly run minority recruitment program is a continuing rather than a sporadic process. There are a wide variety of grants available to police departments from federal agencies, particularly Law Enforcement Assistance Administration, and from private agencies, organizations, and foundations for the purpose of conducting minority recruitment programs. The Indiana State Police has never requested adequate appropriations for recruitment of minorities. The Indiana State Police Department has never applied for any of these grants, except that the Indiana State Police has recently made application for an L.E.A.A. grant which includes money for recruitment. This application was pending at the time of trial. This court would not attempt to draft a recruiting program for the department on this record as the citizens of Indiana have placed this responsibility upon defendants. The failure to recruit qualified minority citizens must be noticed and remedied by the defendants. The incumbent administration of the department, it appears from the evidence, is girding itself for some changes. This is evident from the fact that it has caused studies to be undertaken by recognized experts from Detroit, Michigan and Chicago, Illinois and federal financial assistance is imminent. The defendant, Richard Jones, individually, and in his official capacity as Personnel Director of the Indiana State Police Department at no time has been assigned the undertaking of recruiting caucasian or negro applicants for the position of trooper, nor has he participated in such recruiting or practiced any discrimination in such. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for recruiting and practiced no discrimination in such recruiting. The named members of the Indiana State Police Board, as individuals have not nor have they in their official capacity intentionally failed to recruit minority applicants for troopers. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to

create liability for the recruiting by the Indiana State Police Board as to such defendants as individuals. This is to be distinguished from their liability as official members of the Indiana State Police Board for the Indiana State Police Board's breach of duty for recruitment in the past.

The applicant for the position of trooper must file an application. The form is furnished with instructions as to how it is to be executed. The completed application contains the facts which disclose whether or not the applicant meets the initial standards previously referred to in accordance with the statute, rules and regulations. The executed applications are examined by the defendant, Richard Jones, the Personnel Director of the Indiana State Police Department, who evaluates and decides whether the applicant should be rejected for failing to fully complete the form; and whether the applicant should be rejected based upon the responses the applicant gave regarding an arrest or conviction record of the applicant, or the military service record of the applicant, or the physical condition of the applicant. Information given in the application forms a basis for the subsequent background investigation which is conducted, should the applicant pass the Otis Gamma C text. An applicant may be rejected on the basis of information given on the application form, but that rejection will not occur until the background investigation phase of hiring or the subsequent interview with a committee or board created by the defendant called the Personnel Board. This Board is not a continuing body. The members of this committee or board are selected by the superintendent from members of the superintendent's staff who serve in this capacity for a specific training school class. The complement of the committee or board has varied from six (6) to nine (9). The defendant, Richard Jones, as the Personnel Director of the Indiana State Police Department, was appointed and served for the first time on as a voting member on such committee for the most recent training school. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department merely executed his ministerial duties in reviewing such applications and rejections of applicants and practiced no discrimination. The incum-

bent superintendent designated a negro trooper along with other staff members to review the rejection processing of such negro applications by the Personnel Director upon request of persons outside the Indiana State Police Department who were disatisfied with the results of a class of recruits whose applications were the result of the recruiting drive by negro troopers which drive was previously referred to in this entry. The negro trooper who participated in such review saw no cause to refute the rejections by the Personnel Director. The members of the Indiana Law Enforcement Training Board, as individuals or as official board members have no obligation under the law for reviewing such rejection processing of applications and practiced no discrimination in such processing of applications for a trooper position. The named members of the Indiana State Police Board as individuals have not directly or indirectly wrongfully rejected such trooper applications at this stage of the selection processing of trooper applications.

After an applicant files his application and meets the initial standards, all in accord with the statutes, rules and regulations previously referred to in this entry, the applicant must then submit to tests and achieve a score of one hundred ten (110) or higher on the Otis Gamma C test. He was also given a SRA adaptability test (a U.S. Army general classification test being the First Civilian Form AH, published by Science Research Associates). This test was given as a "warm up" test, with SRA scores also serving as a double-check on the accuracy of the Otis Gamma C test score. These tests are administered by the Personnel Director. The passing score must be attained by the applicant in order for the applicant to proceed to further steps along the selection process. The scores on this test are also disclosed to the Personnel Board by the Personnel Director when he briefed them for the personal interview step in the applicant's competing to attend training school. The Indiana State Police Department have used the Otis Gamma C test for many years. It is a quick-scoring mental ability test authorized by Arthur S. Otis, Ph.D. who was formerly Development Specialist with the Advisory Board, General Staff, United States War Department. His Gamma

Test (form C) is utilized for senior High Schools and Colleges. The Otis Gamma Test (form C) is a "mental ability" or "intelligence quotient" type test consisting of eighty (80) questions relating to arithmetic, verbal and special perception skills. The applicants who score one hundred nine (109) or below are rejected from competing further for the position of trooper. The cutscore was first adopted by the Indiana State Police Department from the cutscore of one hundred ten (110) on a test used by the armed services for selecting candidates for Officers Candidate School. Although the Indiana State Police have adopted a cutscore of one hundred ten (110), the rules and regulations promulgated by the Law Enforcement Training Board previously referred to in this entry set a minimum standard cutscore of ninety (90). The Indiana statutes and the rules and regulations previously referred to encourage higher standards and leave it to each police agency to set its standard in this regard so long as it is not below such minimum. Although the scores of candidates taking the Otis Gamma Test (form C) are not separated by race for prior years, those scores are known for the recruits in the training school for early in the year 1974 and for the recruit training school late in the year 1974. In August 1973 such test was administered to six hundred seventy (670) caucasian applicants and twentyone (21) negro applicants. A total of three hundred eightyfour (384) caucasians, or fiftyseven (57) per cent passed the test, while only six (6), or twentynine (29) percent of the negro applicants passed such test. In April 1974 such test was administered to six hundred thirtyfive (635) caucasian applicants and twenty (20) negro applicants. Of that number three hundred fiftynine (359), or fiftyseven (57) per cent of the caucasians passed and none of the negros passed. The entire record of the defendants' use of such test discloses only twentyeight (28) negro applicants have passed such test and only four (4) of those were ultimately hired. The rebuttable evidentiary presumption from such statistics is that the test discriminates against negro applicants. The employer has the right to insist that any prospective applicant caucasian or negro must meet the applicable job qualifications of a trooper in keeping with U.S.

Equal Employment Opportunity Law's purpose, that is, to promote hiring on the basis of job qualifications, rather than on the basis of race or color. The Indiana State Police Department has received grants from the Law Enforcement Assistance Administration of the U.S. Department of Justice for various purposes, which grants exceed one hundred thousand dollars (100,000.00). Defendants are subject to L.E.A.A.'s Equal Opportunity in Employment Guidelines. These guidelines incorporate and substantially duplicate those of Equal Employment Opportunity Commission's guidelines respecting testing standards. The law commands that any test used by the defendants must measure the person for the job and not the person in the abstract. In order to rebut the presumption the defendants must prove by a preponderance of the evidence that the Otis Gamma Test (form C) is a reasonable measurement of the applicants for the duties of a trooper. Prior to trial the Indiana State Police Department had not performed a study, and was not otherwise aware, of whether any of the applicants who scored one hundred nine (109) or below on such test and were rejected would have been able to successfully complete the remaining phases of the selection process or adequately perform the position of trooper. There is no comparison of score results of such test of caucasian and negro applicants who reside in the major cities to factually determine whether or not the qualified major city residents are not making application for the position of trooper but only the lesser qualified persons are applying. The Indiana State Police Department has failed to conduct a proper validity study prior to trial within the meaning of the U.S.E.E.O.C. Guidelines or A.P.A. Standards. The Study which has been conducted by the Indiana State Police Department is simply a job analysis for the position of trooper, and it fails to meet the U.S.E.E.O.C. Guidelines in that, it does not analyze the relationship between such test and any measure of job performance of a trooper; the study does not contain any adequate analysis of differential validity (inquiring into whether the test may be a valid predictor of job success for caucasian but not for negros); the study failed to include such test's scores of actual job applicants

and he studied the job performance of only one (1) trooper for one-half (½) day to formulate his opinions of the position of trooper in general; the study did not show that the cutscore on such test is reasonable and consistent within the work force or group or force on which the study was conducted; the study was not a criterion related validity study, a content validity study, nor a constructive validity study which is the only type of validity study which may be offered in defense of the test, or to rebut the presumption of invalidity found above; and the study failed to show that there is not available a suitable alternative to such test which will select qualified applicants equally well but with a lesser racial impact, as required by U.S.E.E.O.C. Guidelines. The defendants during the trial made a study of the correlation between the scores on the Otis Gamma Test (form C) of those applicants who attended the cadet school and their final grades in a criminal law course. While this evidence is relevant and useful it is not conclusive under the standards of the U.S.E.E.O.C. Guidelines. When the defendants have completed the planned program it may well be that a cutscore of one hundred and ten (110) is an acceptable standard for the selection of troopers and indeed may save some applicants the time, loss of earnings from other gainful employment and possible embarrassment in being permitted to attend a training school when the test could predict failure. It must be pointed out in this connection that plaintiffs have already prevailed in these findings on their claim that negros are not applying for the position of trooper. Also there are unknown facts as pointed out in this entry. The assigned duties of a trooper are described in the statutes, rules and regulations referred to in these findings requires a person of general intelligence. He must have the ability to absorb, retain and apply the necessary instruction as a trooper. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department merely executed his ministerial duties in administering the Otis Gamma Test (form C) and he practiced no discrimination. Mr. Jones while finding no fault with the use of such test yet when he was first named to his position he recommended a battery

of test at this point in the selection process and repeated such to Dr. Furcon when he was interrogated about alternatives to such test. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for prescribing or requiring a score of one hundred ten (110) on such test. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity intentionally utilized such test to discriminate against minorities or applicants for the position of trooper. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for such testing by the Indiana State Police Board as to such defendants as individuals. This is to be distinguished from their liability as official members of the Indiana State Police Board for the Indiana State Police Board's breach of duty for utilizing such test.

Applicants who successfully pass the Otis Gamma Test (form C) are then subjected to a background investigation. If the applicant is an Indiana resident, the application is forwarded to the Indiana State Police Post of the geographic district of the applicant's residence. If the applicant is a non-resident of Indiana the applicant's background investigation is conducted by the police organization of the State of the applicant's residence. That District Commander of the Indiana State Police assigns a trooper of that district to make the Indiana investigation. In the past, a Detective First Sergeant from each district participated in instructional conferences and such officer was assigned by that District Commander to conduct the background investigation of applicants in his district. The position of District Detective First Sergeants was discontinued about three (3) or four (4) years ago so the instruction conference was discontinued at that time. In lieu of the conference a letter has been directed from the Personnel Section of the Indiana State Police Department to responsible personnel. A copy of the April 18, 1974 letter is attached to this entry, marked plaintiffs' deposition Jones Exhibit No. 17, and is made a part thereof. The Personnel Section invited the in-

vestigator to ask for assistance, if required. In addition oral instructions and supervision were given to the investigator by the District Commander and other experienced troopers. The background investigation phase of the hiring process required objective factual findings by the investigating trooper. The process also required subjective determinations and evaluations on the part of the investigation trooper, his District Commander, and the Personnel Officer who review the investigators findings and recommendations, and all of which is reviewed by the Personnel Board before the applicant is permitted to proceed to compete the trooper position. The investigator then makes a thorough check of all aspects of the applicant's life by interviewing past employers, present employers, church members, neighbors, educators, anyone who might have had any connection with the applicant, and two or three personal interviews with the applicant and his family. Local police agencies are contacted to determine whether the applicant has a record of any arrests (this policy has changed from time to time, that is, at one time an applicant would not be accepted for a misdemeanor or felony conviction and later changed to possible acceptance for misdemeanor convictions. Also rejection for arrest and later changed to possible acceptance for arrest), convictions, or accidents, also a check with the Bureau of Motor Vehicles of Indiana, and elsewhere for anything that would give an insight on the applicants ability to function as an Indiana State Police Officer. The investigator makes a check of the applicant's credit by contacting the local banks, credit associations and credit reporting agencies. Applicants with prior military service are checked through their local military branch to determine the circumstances their discharge. The investigator is authorized to conduct medical injuries, draft board inquiries and other privileged matters by means of a written release form signed by the applicant. The release form, the case report, and cover sheet for the case report constitute the working papers used by the investigator. The case report is a typewritten summary of the investigation. The cover sheet to the case report provides for an evaluation of the applicant by the investigator. As disclosed by the plaintiffs' deposition Jones Exhibit No.

17 (attached hereto) the face of the cover sheet has six criteria: (A) General Character and Reputation, (B) Credit Standing, (C) Sobriety, (D) Police Record, (E) Previous Work Record, and (F) Investigators' Recommendation. Under categories (A) and (B) applicants are rated either excellent, good, questionable, or unacceptable. Under category (C) applicants are evaluated as either a non-drinker, mild drinker, or heavy drinker. Under category (D) applicants are described as either having no record, a traffic record, or a criminal record. Under category (E) applicants' work is rated as either excellent, good, poor, or unacceptable. Under category (F) the investigator can rate the applicants as either excellent, acceptable, questionable, or unacceptable. A space for the investigator's remarks allows for a statement of the investigator's conclusions concerning the applicants' general fitness. The investigator is encouraged among other things to appraise the applicant on the basis "will I want to work with the applicant for the next twenty (20) years." No set of specific guidelines can possibly be devised that would anticipate all factors material and relevant to such a report and likewise material and relevant to the applicant's being a qualified trooper. The investigator is a trained fact finder and makes his report from personal knowledge after interviews with the applicant, applicant's wife, applicant's parent, after viewing the applicant's home, his motor vehicle, after viewing the applicant and his wife's demeanor, attitude and their likes or dislikes about a trooper's duties and its affect on their home life, the applicant's ability to converse along with many other factors. The investigators reports sometimes included quotes of third persons such as former employes of the applicant which were very important to the investigator and those who review the investigator's report in determining the credibility of the third person interviewed and of the investigator. Such is factual reporting and not any indication of prejudice on the part of the investigator and defendants. When an investigator rejects an applicant on the character examination the Personnel Director marks that applicant's file as "questionable" and the applicant is then passed in the processing to the physical examination. On some occasions the appli-

cant's file would be assigned to another if the questionable matter could not be checked out by the Personnel Board or by the polygraph test. The investigator was sufficiently overseen and his work reviewed so as to sift out of the selection process prejudice, if any, of that investigator. A review of the files of the fifteen (15) of the twentyeight (28) negros who had passed the Otis Gamma Test (form C) but failed the character investigation discloses that there was a reasonable basis in fact for their rejection. A troopers' ultimate task is to appear as a witness in criminal prosecutions. Any basic deficiency in the trooper's character could be detrimental to the outcome of the litigation. Any basic deficiency of trooper's character in the hands of a skillful defense lawyer will be used unmercifully and with telling effect because of the required degree of proof placed upon the State and because of the public's belief that its public servants should leave no doubt as to their servants' conduct and the accuracy of their investigations and testimony. The trooper becomes the accuser in a criminal trial and subject to being tried by the defense in trials. Whenever an arrest is made by a trooper there is the potential of the arrestee harboring an emotional resentment against the trooper at the scene of the arrest. The conduct of the trooper that would precipitate an outburst of passion or assaultive conduct by the arrestee and the reaction of the trooper to such conduct is relevant to the well being of the trooper, the arrestee and the public's right to a fair trial unaffected by misconduct, mistakes, or lack of ability of a trooper to cope with the incident. These examples among many other reasons clearly validate the need for the defendants' character investigation. The number of rejects of negros in the pertinent recorded years is due to the established fact that the quality of applicants were not being recruited from the urban areas, all as previously found in this entry. The investigation does seek out the views of both caucasians and negros to ascertain whether any militants of either race are among the applicants. The plaintiffs contend that the investigations of character, including arrest records of applicants has a disparate impact on negros because statistics show that negros comprise twentyseven and five-tenths (27.5)

per cent of the arrestees in the nation when they are only eleven (11) per cent of the population as of the year 1973; that the investigations of character including credit standings of applicants has a disparate impact on negros because statistics show that negros are worse off economically than caucasians and more likely to receive poor credit ratings. This is evidenced by the statistics that in the year 1969 there were nineteen (19) per cent of the negros in Indiana as compared to six and seven-tenths (6.7) per cent of the caucasians who were below the poverty level; the median income of the negro families was seven thousand nine hundred four dollars ($7,904.00) as compared with ten thousand one hundred seventeen dollars ($10.117.00); the 1973 unemployment rate in Indiana for negros was ten and seven-tenths (10.7) per cent while it was only three and eight-tenths (3.8) per cent for caucasians; that the investigations of character including military service discharges has a disparate impact on negros because statistics show that negros receive a lower proportion of honorable discharges and a higher proportion of the general and undesirable discharges than the caucasians with similar educational levels and aptitudes (in the fiscal year 1971 a lower proportion of honorable discharges than caucasians of similar aptitude and education; and the statistics show that ninetytwo and seven-tenths (92.7) per cent of the caucasian dischargees receive honorable discharges, while eightysix and one-tenth (86.1) per cent of the negros receive them; the statistics further show that of general discharges, caucasians receive four and two-tenths (4.2) per cent while negros receive seven and five-tenths (7.5) per cent; the statistics also show that of undesirable discharges, caucasians receive two and six (2.6) per cent while negros receive five and two-tenths (5.2) per cent; the statistics continue to show that for bad conduct discharges the caucasians received five-tenths (0.5) per cent and the negros received one (1.0) per cent; and that military authorities have commenced restructuring its discharge system in order to eliminate racial unfairness. The plaintiffs' contentions concerning the character investigations including a review by defendants of the applicant's arrest record, credit standing,

and military discharges is not based on reason or logic. The defendants did not reject or approve the applicants of either race based on such statistics or that an applicant is one of such statistics. The defendants and not the character investigator of an applicant pass judgment on the record of the applicant. The defendants in passing judgment on each applicant, caucasian and negro, look into the applicant's arrest record and the background of the surrounding circumstances of such arrest; look into the applicant's credit record and if poor, the reason therefore or the surrounding circumstances thereof; and look into the military discharges and the surrounding circumstances. The relevancy, materiality of such material or such materials have a very close relationship of vital factors of a trooper's job performance, that is, credibility, liklihood of being victims of inducement by the criminal element, and attacks on the trooper in trial and other obvious resulting effects, including the ill effects upon the trooper personally which also results in a waste of Indiana's investment in training the trooper and a breakdown in enforcement of the law generally by the losses in those cases in which that trooper was the arresting or investigating officer. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department merely executed his ministerial duties in dealing with the background information of applications of the applicants for the trooper positions. Mr. Jones has served one (1) time on the Reviewing Personnel Committee of Personnel Board which has no continuous standing and he is not sued in such capacity. Mr. Jones had no power to and did not create the selection process of background investigations of applicants. There is no evidence that Mr. Jones practiced any discrimination toward plaintiffs.

The incumbent superintendent designated a negro trooper along with other staff members to review rejection processing of negro applications by the Personnel Director upon request of persons outside the Indiana State Police Department who were disatified with the results of a class of recruits that had been recruited by negro State Police troopers acting as recruiters all of which has been referred to in this entry. The negro trooper who participated in such re-

view saw no cause to refute the rejections and processing by the Personnel Director. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for reviewing such processing of the background information and practiced no discrimination against the plaintiffs. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity intentionally failed to provide for a background investigation of the negro applicants for the position of trooper. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for the processing method in question of background investigations by the Indiana State Police Board as to such defendants as individuals. This is to be distinguished from their liability as official members of the Indiana State Police Board for any alleged breach of duty to plaintiffs by the Indiana State Police Board. In view of the above findings as to the challenged processing of background investigations there is no liability as to the official members of the Indiana State Police Board.

After the background investigation the next stage in the application processing is the physical examination. It is conducted as quickly as possible after the background investigation phase of the processing is complete. This is done by several physicians under the supervision of the Indiana State Police Department physician. Certain health standards have been changed through the years, such as eye requirements, height, and weight. No specific charges are made in the complaint concerning the physical examination of applicants for trooper. The plaintiffs' make no complaint of the requirements of the physical examination and the rejections of applicants but site two (2) instances in trial where medical personnel conducting the examinations disqualified negro applicants for a medical defect but approved caucasian applicants with the same medical defect. In November of the year 1969 a negro applicant for the position of State trooper was rejected for being underweight. The twentyfour (24) year old applicant's November 11,

1969 application stated he was five (5) feet eleven (11) inches (without shoes) in height and that he weighed (stripped) one hundred forty (140) pounds. This was verified by defendants and the applicant was permitted to take and did pass the adaptability test. This applicant was married and had a wife and two (2) children. The applicant was extremely thin, being five (5) feet eleven (11) inches in height and weighed one hundred thirty-six (136) pounds; the applicant prior to making application never weighed over one hundred forty (140) pounds in his life; the applicant was in debt in the approximate sum of six thousand dollars ($6,000.00), not counting what he owned on his dwelling; the applicant possessed two (2) motor vehicles, one (1) of them being a 1968 Lincoln Continental, and it was apparent that he was living above the family income; the applicant was a chain smoker; and the applicant had deformed fingers on both hands. On January 20, 1970, before any physical examination by doctors, the superintendent who preceded the defendant superintendent sent such applicant a letter advising him that he was rejected. Such letter stated, "***. After reviewing your investigation, it has been determined that you do not meet the standards prescribed for applicants seeking admission to the Indiana State Police Recruit Training School. If you care to discuss the matter further, you may come personally to the Indiana State Police Headquraters, Personnel Section, Room 304, State Office Building, 200 North Senate Avenue, Indianapolis. Office hours are Monday through Friday, 8:00 A.M. to 4:30 P.M. ***." Thereafter the rejected applicant became a poilice officer with the City of Indianapolis, Indiana in April of 1972 and at the time of trial was assigned to the vice squad of that police force. Such rejected applicant in December of 1974 weighed approximately one hundred fifty (150) pounds. The plaintiffs would have the court compare such rejection with a caucasian applicant eighteen (18) years earlier who was found to be overweight. The caucasian applicant was allowed to advance through the application process with the proviso that he lose weight. There is a substantial difference between the surrounding facts of the two (2) applications. It is one thing

to reduce weight and another to gain weight. The evidence is sparse as to the surrounding circumstances of the caucasian applicant of 1951. The evidence clearly discloses there have been differing weight as well as height requirements in different years of all applicants and none of which is preferential or detirmental to the races. The selection process for troopers was basically the same when the present Personnel Director made application to become a trooper and he was rejected because he was underweight, even though he was the next door neighbor of the then superintendent, a far removed in time predecessor of the defendent superintendent, but several years later he applied and qualified. This discloses impartial and fair application of the weight requirement. The other alleged example occurred on June 7, 1962 when a negro twentythree (23) year old applicant who had passed the adaptability test, had been processed by defendants through the background investigation and was rejected from medical findings in the physical examination conducted by three (3) doctors employed by defendants; he was then and had been since March 1960 in a cadet status with the Indianapolis Police Department; the first two (2) doctors (whose missions overlapped in examining the applicant and whose specialties were unknown to the applicant) advised him that he would need some teeth correction which if done before the commencement of the training school could be approved medically. The third doctor, who had the responsibility of making the final determination, examined the applicant and rejected him with the remarks; "Inadequate teeth for mastication, malocclusion, see above", and in addition on the form chart in another space indicated the teeth that were restorable, those that were non-restorable, and those that were missing. The applicant took the report to a Lieutenant in charge who presented it to the assembled Reviewing Committee or Personnel Board who was conducting interviews of applicants on June 7, 1962 at the same location where the physical examinations were being made by the doctors. The Committee or Board directed and the applicant was again examined by the doctor in charge the same day, after which that doctor added by way of clarification in the margin ad-

jacent to that space where he had first indicated in accordance with the key on the form chart the teeth that were restorable, those that were non-restorable and those that were missing, the following: "(1) Malocclusion, (2) Non-restorable teeth, (3) Inadequate teeth:" and he was then rejected for that reason. The applicant within a week went to a dentist, had some teeth pulled, purporting to rectify the malocclusion and a partial plate was installed in time for the training school. Atfer such teeth repair and/or restoration the applicant did not go back to the defendants for reexamination or to disclose such change in condition that would qualify him because he concluded that since he was a cadet with the Indianapolis Police Force that he would pursue that position for which he already had two (2) years of standing. It is obvious from the chart there were some unrestorable teeth and teeth problems on both sides of upper and lower jaw and it was the doctor's opinion they were "inadequate". It is true that there were other teeth that might be replaced by a plate. There was no evidence of the details of the applicant's dental work other than in the generality stated above. The plaintiffs would have the court compare such rejection with a caucasian twentyseven (27) years of age who was medically examined eight (8) years earlier. This applicant's teeth chart showed nothing wrong with his upper teeth by reason of upper prosthetic appliance, four (4) missing back lower right jaw-teeth and two (2) missing back lower left jaw-teeth; and it showed no teeth that were non-restorable; the same doctor in charge recommended on May 19, 1964 the installation of a lower partial dental prosthesus and that if carried out the applicant could be medically approved. That applicant thereafter filed with the defendants a May 25, 1964 statement of a Doctor of Dental Surgery that the applicant had appointments with him to have restorative work and a partial denture made suggesting that the entire process would take several weeks, was already started and that when completed the patient would have a full complement of teeth. That applicant was then authorized to attend and compete in the training school in the year 1964. The plaintiffs would also have the court compare such rejection with a caucasian

twentyfive (25) year old applicant eight (8) years earlier whose teeth chart showed a satisfactory upper denture prosthetic appliance; and the unsatisfactory but restorable three (3) back lower right teeth and four (4) back lower left teeth all of which were missing; the same doctor in charge recommended on February 26, 1964 a partial lower dental prosthesis installation and that if carried out the applicant could be medically approved. That applicant thereafter timely filed with the defendants a statement of a Doctor of Dental Surgery that a bridge for the applicant was being installed and which should be finished by Saturday, March 7, 1964. The applicant was then authorized to attend and compete in the training school. The evidence clearly disclosed that the facts and circumstances of the two (2) caucasian applicants do not compare with the negro applicant. The Committee on Personnel or Personnel Board relied on the medical judgment of a doctor and the plaintiffs offered no medical evidence to refute the defendants' doctor other than that applicant's lay beliefs that subsequent dental work cleared up the findings that the applicant had inadequate teeth for mastication and had no malocclusion after pointing out the specific teeth that were restorable, those specific teeth that were non-restorable, and those that were missing. It is observed that in the applicant's memory that the only defect that caused his rejection by the defendants' doctor was mistaken and in conflict with the medical records in evidence. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department had no legal obligation in dealing with the medical examination and merely executed his ministerial duties in dealing with such medical examination of applicants. There is no evidence that Mr. Jones practiced any discrimination toward plaintiffs. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for such medical examination of applicants and processing the results thereof and practiced no discrimination against the plaintiffs. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity intentionally failed to provide for a medical exami-

nation of applicants for the position of trooper. Such members of the Indiana State Police Board, while they were such members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for the medical examination processing in question by the Indiana State Police Board as to such defendants as individuals.

After the applicant files his application and meets the initial standards all in accordance with the statutes, rules and regulations, previously referred to in this entry, that is, the applicant passes the adaptability Otis Gamma Test (form C), the background investigation is completed, and passes the physical examination conducted by the defendants' designated doctors, the applicant must then submit to and pass an interview with the Personnel Committee or Board. Preparatory for such interview the accumulated files of each applicant eligible for such interview are reviewed by the Personnel Officer and he marks those areas of the respective files that are "questionable". These are made known to the Personnel Committee or Board immediately previous to each applicants appearance for interview. In previous years the Personnel Director served the Committee or Board by presenting such data as areas for questioning of the interviewed applicant. The Personnel Director served in the additional capacity as a voting member of the interviewing body on the most recent train-class. The interviewing body, as previously explained in this entry, is not a permanent body and automatically disbands upon the completion of its mission for a given training class. The applicant is assigned a specific time and date on which to appear in a closed door session. The applicant is in front of the Board in a formal atmosphere and the interviewers ask him specific questions. Immediately prior to the applicant's entry into the interview room the Personnel Director briefs the interviewers on the applicant by reciting the date of birth, educational background, number of dependents, job record, anything contained within the investigation that might bear looking into as pointed out previously but the Personnel Director makes no recommendation. The interviewers do not have any part of the applicant's file, nor any other summa-

ry of such file, but they can request the file but such is unusual that they ask for anything in the experience of the Personnel Director. The interviewers are informed of the applicant's score on the Otis Gamma Test (form C) and only extremely high or low academic records of high school or college might be continued. The interviewers are furnished with an oral appraisal form upon which they score an applicant between sixty (60) and one hundred (100) which is recorded by the members immediately following an interview, sometimes before and sometimes after the applicant leaves the room. This is done without consultation or discussion and represents an evaluation on the interview alone. In the experience of the Personnel Director it has been unusual that there be more than a ten (10) point variance between high and low score. The scores are tallied, the high score and the low score are stricken, the score is then divided by four (4), when there six (6) members of the Personnel Committee or Board and thus derive an average score. The oral appraisal form has been in use for many years. No guidelines are needed for its use by the interviewers for the reason that, for example, the average length of service of the six (6) members of the last Personnel Committee or Board was twentyfour (24) years and they have expertise in evaluating humans. The factors recorded on the form of "Physical Appearance and Grooming," "Voice and Speech", "Ability to Express Ideas", "Emotional Reaction and Poise", "Friendliness", and "General Attitude and Interest" are not scored individually. Each factor has no independent weight unless it represents an outstanding deficiency. All factors are considered equally important. The applicants are ranked according to their standing on this score and their ranking controls the order in which they are allowed to enter the training school. The areas in which the applicants are evaluated are sufficiently defined and are both objective and subjective and a correct result depends upon the character and ability of the Personnel Committee or Board members and of the applicant's presentation. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department for the

most part merely executed his ministerial duties and to a limited extent executed duties involving executive judgment when he submitted summaries of the guidelines filed to the Personnel Committee or Board information interviewing an applicant and pointed out "questionable" items in the files as well as "extremely" high or low academic records of the applicants. Mr. Jones served one (1) time on the Reviewing Personnel Committee or Board which has no continuous standing and he is not sued in such capacity. Mr. Jones had no power to and did not create the interview process before the Personnel Committee or Board. There is no evidence that Mr. Jones practiced any discrimination toward plaintiffs. The superintendent of the incumbent administration designated a negro trooper along with other staff members to review files of negro applicants upon request of persons outside the Indiana State Police Department who were disatisfied with the results of a class of recruits who were recruited by negro State troopers which was previously referred to in this entry. The negro trooper who participated in such review saw no cause to refute the rejections and labeling of "questionable" items in the applications of certain negro applicants. The members of the Indiana Law Enforcement Training Board as individuals or as officials have no obligation under the law for reviewing such processing of the interview before the Personnel Reviewing Committee or Board and practiced no discrimination against the plaintiffs. The named members of the Indiana State Police Board as individuals have not nor have their official capacity intentionally failed to provide for a valid, fair and unbiased method of interview and scoring of negro applicants for admission to the training school. Such members of the Indiana State Police Board, while they were such board members when this action was commenced on August 26, 1974, there is no showing of the length of their service to create liability, for the processing method in question of the interview selection of applicants by the Personnel Reviewing Committee or Board so authorized by the Indiana State Police Board, as to such defendants as individuals. In view of the above findings as to the challenged processing of background investigations there is no liability

as to the official members of the Indiana State Police Board.

Following the Personnel Committee or Board interviewing processing of applicants for the position of trooper for the last two (2) years, or the last two (2) training schools, the last phase of the selection process for entry into such school has been the polygraph examination of those applicants who have passed their interview. The polygraph examination is conducted by trained technicians from within the Indiana State Police Department. The objective of the polygraph examination is to determine the character of the applicant in three (3) general categories, honesty, use of narcotics, and morals, however the technician may pursue other matters in reaction to answers of the examined applicant. Two classes of applicants result from this test given by the polygraphist, acceptable and questionable. If the report is acceptable the applicant is advised by the Personnel Director and is the report is questionable the applicant is advised and that he would be contacted later. The final decision on those applicants in a questionable category are made by the superintendent and the available executive staff (Lieutenant Colonels and Division Commanders). No unacceptable applicants have been found by this test. The polygraph test was prompted by the prevalence of narcotic users among the youths of today plus the fact that the test has been accepted by other police agencies. The decision to use such test was that of the superintendent. The polygraph test resolved that which could be determined in a battery of tests. This test is acceptable and presents no discrimination issue with respect to minorities. The defendant, Richard Jones, individually and in his official capacity as Personal Director of the Indiana State Police Department had no duties and performed no acts with respect to the polygraph test. The members of the Indiana Law Enforcement Training Board as individuals or as officials had no duties and performed no acts with respect to the polygraph test. The named members of the Indiana State Police Board as individuals have not nor have they in their official capacity provided for an improper discrimination in testing by

use of the polygraph examination. Such members of the Indiana State Police Board, while they were such board members when the action was commenced on August 26, 1974, there is no showing of the length of their service to create liability for the establishing and conducting of the polygraph test in question by the Indiana State Police Department.

The first negro to be employed by the Indiana State Police Department as a trooper was in the year 1962. Such negro has received no promotions in rank to the date of trial and is still a trooper. After serving five (5) years time-in-grade such negro trooper applied on March 19, 1968 for a temporary or spot promotion from trooper to sergeant to fill an announced vacancy in the Intelligence Section of the Indiana State Police Department. The vacancy was filled by another qualified person. Such negro trooper applied on August 30, 1968 for a permanent promotion from trooper to sergeant to fill an announced vacancy in the Operations Center. The vacancy was filled by another qualified person. Such negro trooper applied on October 28, 1968 for a permanent promotion from trooper to sergeant to fill an announced vacancy in the Director of Safety Education in District fortyfour (44) which district includes the City of Indianapolis. The vacancy was filled by another qualified person. Such negro trooper applied on January 14, 1969 for a change of position from the duties of a trooper to that of a trooper having the duties and title of Assistant Director of Safety Education in District fortyfour (44). He was accepted and filled this position until July 2, 1969 when he voluntarily resigned and resumed the regular duties of a trooper. Such negro trooper applied on April 14, 1969 for a temporary or spot promotion from trooper to sergeant to fill an announced vacancy of Aide to the Governor of Indiana. The vacancy was filled by another qualified person. It is not unusual for caucasian troopers to make multiple applications for promotion and not be accepted. Such negro trooper has not applied for promotion since the year 1969. This was a serious conceding mistake on his part. Such negro trooper has continuously been assigned since his appointment to the area of his pre-appointment residence. He has sought and is

continuing to obtain an education on a part-time basis at the Indiana University-Purdue University at Indianapolis and will graduate with a bachelor's degree late in the year 1975. The second negro was employed in the year 1964. In the year 1974, ten (10) years after his employment, he was promoted from the rank of trooper to sergeant. When promoted, he had completed his bachelor's degree in his spare-time and was in his final semester at the Indiana University Law School of Indianapolis seeking a Juris Doctor Degree and had served several months as the defendant's legal advisor. Two (2) other negro troopers of the defendants have never been promoted. The negro troopers have been critical of the defendants' recruitment practices and promotion practices. The defendant has never conducted a validation study with regard to the job relatedness of the promotion policy requiring five (5) years service in a trooper position before such trooper could be eligible for a promotion to a line position. The negro troopers have not been assigned to areas of duty under the same plan as the caucasian troopers. Caucasian troopers are assigned to an area removed from the area of their residence when employed but negro troopers are so assigned. Separate treatment for negro troopers, even though favorable in that it permits the negro trooper to live in the same community when appointed has a detrimental effect on his being advanced by way of promotion as is the caucasian trooper, in that, the caucasian trooper experiences the full obligations of a trooper and as thus exposed tends to be more qualified with more varied experiences than the negro trooper. The employer cannot help but be practical when it appraises the personnel and credits experienced personnel over inexperienced personnel. The resulting negro troopers' manifest irritations at being passed over in promotions and the too few negro troopers added to the defendants lower appraisals of the negro. All of which, among other things, has prevented promotions because of race from administration to administration of the Indiana State Police Department. The first promotion of a negro trooper is credited to the present administration. The first negro trooper employment is credited to a recent earlier administration of the depart-

ment. Nevertheless, each administration is responsible to perform all legal obligations and avoid discrimination. The current administration of the department is committed to affirmative action and must proceed with the implementation as it has agreed to do and under the law is required to do. The defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department had nothing but ministerial duties in connection with the promotions. The marchers of the Indiana Law Enforcement Training Board as individuals or as officials had no duties and performed no acts with respect to promotions. The named members of the Indiana State Police Board as individuals were board members when the action was commenced on August 26, 1974 but there is no showing of the length of their service to create liability for the promotion processing.

The next phase of the competition of the applicant for the position of trooper has been the Training School conducted on the Bloomington, Indiana campus of Indiana University. In more recent years the Training School has been under the management of the defendant, The Indiana Law Enforcement Training Board. Its legal existence has been referred to in this entry in describing the historical development of the Indiana State Police Department. The role of the defendant, Richard Jones, as Personnel Director of the Indiana State Police Department, in the selection process generally may be said to conclude at this point. He has been a lecturer at the Training School and he continues to ministerially process all personnel matters of the trainees, including responding to inquiries of the trainees and all trainee terminations such as voluntary resignations which from experience commence in the first day of the school and such as involuntary terminations. After the trainee's successful completion of the Training School he is subjected to an Interview with the superintendent and members of the Indiana State Police Board and if he successfully passes such interviews the trainee is employed as a trooper in a one (1) year probationary status which may be extended all as explained in this entry under the historical development of the Indiana State Police Department. The Law Enforce-

ment Training Board which came into existence July 1, 1967 is a certifying agency and it operates the Law Enforcement Academy. Since 1935 the Indiana State Police conducted its own Training School and such school is certified along with its instructors and facilities by the Law Enforcement Training Board in recent years. The minimum standards which the Indiana State Police Training School was required to follow were adopted July 6, 1972 by the Law Enforcement Training Board. These minimum standards were adopted after an eighteen (18) months study by the Curriculum Committee composed of qualified persons for such an undertaking and from experience in the conduct of classes from June of the year 1969 in dealing with trainees from all law enforcement agencies in the ninetytwo Counties of the State of Indiana of all races and ages, experienced police officers and non-experienced police officers. These minimum standards and procedures, with the exception of the Otis Gamma Test (form C) as executed by the Indiana State Police Department have been reviewed in this entry and found to have been properly executed without racial discriminatory bias and without a racially discriminatory impact on minorities. It was demonstrated by the evidence that such minimum standards and procedures were in practice validated to establish predictive validity as a measure of actual to performance. The Training School of the Indiana State Police Department in the past consisted of two hundred sixty (260) hours of mostly classroom training. The trainees are required during the six (6) weeks training to remain together in sequestered dormitory manner except for some brief liberty time. Temporary plans call for four hundred (400) hours of classroom training in the future. Fifty four (54) hours of the two hundred sixty (260) hours are devoted to a law course study. Other courses include psychology and how to get along with people, general police subjects, firearms training, the art of self defense, physical exercise, and other courses. The academic part of the course is a major part of the school curriculum and to compete the trainee must be successful in that part of the curriculum. The successful trainee receives college credits from Indiana Uni-

versity for such studies. The curriculum is practically accepted to the needs of an Indiana State Police Officer and successful completion of such study is validly predictive of the measure of his actual job performance. There is no evidence of racial discriminatory bias in the conduct of such Training Schools and there is no evidence of such Training Schools having a racially discriminatory impact upon minority applicants for the position of trooper.

The Indiana State Police Board and the superintendent conduct an interview with each member of the Training School after completion. A State Police staff member who has been present with the class is normally requested to be present and answer detailed questions of the board members. The board rotates the chairman's duties from interview to interview with the cadets. The board reviews the personnel file of each trainee cadet, academic standard at the training school and school staff rating. The experience has been that a few trainees have not been approved although the January 1974 class were all approved in the interview. There is no scoring system and the board votes "yes" or "no" on the appointment of the trainee and the majority vote prevails. The superintendent has no vote. There is no evidence that such interviews have been discriminatory to minorities.

When the applicants filed their applications they were required by the defendants to file their statement of political adherence. The form prepared by the defendants reads as follows:

"NOTICE TO PROSPECTIVE EMPLOYEES
OF
THE INDIANA STATE POLICE DEPARTMENT

The State Police Act of 1954 requires that the Department be kept in political balance, i.e., that not more than one-half of the employees in each rank, grade, or position be adherents of any one political party. When new Troopers or other personnel are employed, this law requires that insofar as is consistent with the satisfaction of prescribed standards and prerequisites, the political balance in the grade of Trooper or whatever other position is involved be maintained. This

same law also prohibits any employee of the Department from participating in any manner in the activities or interests of any political campaign other than by exerting his official duties and varies at the election. (Acts of 1945, Chapter 341, Section 4, Page 1622; Burns, 1952 Replacement, Section 47–849).

STATEMENT OF POLITICAL ADHERENCE

I have read and I understand the paragraph above, I understand that it is necessary for me, as a prospective employee of the Indiana State Police Department, to furnish the Department with a statement of my political adherence in order that the provisions of the law may be complied with should I be employed in the future by the Indiana State Police Department. For the purpose stated above I place myself on record as an adherent of the _____ Party.

Signature _____
Date _____"

It is noted that the applicants are not required to declare their political party affiliation as either Republican or Democratic but only to state the name of the party to which they are adherents. History discloses that a political party is not permanent and the members of known political parties fluctuate. History discloses that the majority of plaintiffs' class in the past in Indiana have been adherents of one of the existing major political parties and in more recent history the majority of such class have been adherents of another of the existing major political parties. The history of the Indiana State Police Department already referred to in this entry points up the sound governmental objective of the Indiana General Assembly's decision to prohibit the appointment by the Indiana State Police Department of adherents of any one (1) political party to a rank, grade or position which contains employees of more than one-half (½) of whom are adherents of that same political party. The statute as applied by the defendants also becomes a factor in the defendants' selection process at the point where candidates are selected for entrance into the Training School (only if the number accepted qualified prospects for that school is greater than the planned number of trainees of a given school class). The Indiana State Police of today was

organized out of the political excesses in Indiana in the 1920's, as previously referred to in this entry. After a few years of operation under the Act, history discloses, that the personnel of the Indiana State Police Department were almost one hundred (100) per cent adherents of one (1) political party. The leaders of both major political parties sought to and did rectify this overleading of the Indiana State Police Department that could result in a use of the agency for other than its mission or could be destroyed by way of political retaliation. Indiana citizens were entitled to talented police leadership regardless of the political affiliation of the administration in power so that a new administration could reach into the ranks or in the retired ranks of the State Police Department for that police leadership of its choice. No session of the General Assembly of Indiana since the early 1940's has sought to change such provision of the Indiana State Police Act even though the political majority of the Indiana General Assembly and the State Executive—Administrative branch have changed from time to time. The plaintiffs evidence concerning plurality of voters in 1974 included a privately paid polling agency's report to a political candidate. Such evidence was so ridiculously one-sided that it is wholly unreliable. The results of the election further disclose such unreliability as that candidate received fifty plus (50.+) per cent of the total vote cast. Since the year 1940 there have been four (4) governors of one (1) of the major parties and five (5) of another major party. The contested provision of the statute has no race prejudice objective and has never been executed by the defendants with such an objective. The plaintiffs, however, allege such provisions of the statute has a racially discriminatory impact against negro and other minority applicants for employment and promotion, and deters their adherence to, much less membership in, any political party. There is no evidence of an impact against plaintiffs by way of deterring their adherence to, or membership in any political party. The impact, if any, of such provisions of the statute are permissible for the good of the State of Indiana. The plaintiffs have not raised an issue as to the political composition of the Indiana State Police Board. The statute

previously referred to, requires that the Indiana State Police Board membership must consist of six (6) members, not more than three (3) of whom shall belong to the same political party. It is observed that this is consistent with Indiana's plan of composition of many of its executive administrative boards. The plaintiffs' evidence fails to disclose the percentage of the plaintiffs' class that are affiliated with the political parties or without any affiliation. The eligible applicant must be within a certain age group (21–34) women they are but a class within the total caucasian and negro citizens in Indiana. The relative percentage of the eligible negro age group to the caucasian age group is unproven, that is, that group that are high school graduates or equivalent and possess the other factors of qualification before it can be said that there is a basis for the charge of discriminatory impact. The public benefit to the citizens of Indiana as a whole as well as all minorities from the challenged established policy of the Act is apparent. There may be other theories of personnel selection to operate a police organization such as the various forms of non-partisan plans that are in use. Such plans are not without their deficiencies and it is the privilege of the State of Indiana to select a valid plan. The governor of Indiana and the head of the executive branch of the government in Indiana must possess the power to execute the laws of Indiana must possess the power to execute the laws of Indiana through personnel including a police department. There is no racial impact from this Act. The plaintiffs do not attack the political equality provision on any other ground than racial discrimination. The impact is on the political party of which the plaintiffs do complain and is not discriminatory to the negro applicant. The provision applies equally to the negro applicant for the position of trooper in all political parties. A benefit could be the result in the selection process for attendance at the training school for trooper and for appointment after such schooling, in that, the negro applicants who plaintiffs claim are dominantly members of one (1) political party only compete with applicants who are members of his own political party, a much less number than the whole group of applicants of all political parties, as opposed to the

negro applicants competing with the entire group of applicants of all political parties. This much can be said of the advantages and disadvantages of promotion during employment by the defendants. In the last two (2) years or last two (2) schools no applicant was excluded from the school because of the political limitation requirement because there were insufficient qualified applicants to pass all phases of the selection process.

The plaintiffs and others similarly situated have suffered irreparable injury as a result of the defendants' acts of commission and omission as found in this entry to have in the past and present racially discriminated in their employment practices. The plaintiffs have no adequate, plain and speedy remedy at law.

The action is based upon past and present racially discriminatory employment practices of the defendants and the establishment of racially discriminatory minimum standards for applicants for law enforcement training in the State of Indiana by the defendants in violation of the rights secured to the plaintiffs and the amount in controversy for each plaintiff exceeds ten thousand dollars (10,000,00) exclusive of interest and costs. The plaintiffs by commencing their action by-passed the U.S. Equal Employment Opportunity Commission's Administrative proceedings for the reason that such proceedings have been generally unable to cope with a situation where emergency, preliminary relief is required to prevent irreparable damage; for the reason that the defendants intended to proceed with an all caucasian training class to fill fiftytwo (52) current openings, as alleged in the complaint, in the Indiana State Police Department for troopers, preliminary relief was necessary to either preserve the status quo or, in the alternative, require an affirmative hiring plan; because defendants are public employers their discriminatory acts prior to 1972 could not be the basis of a claim; the only emergency relief available from such proceedings was that of "status quo"; and if the defendants made a compelling case for filling the fiftytwo (52) openings immediately,the court in the emergency proceeding would be unable to order an administrative hiring plan. The plaintiff, National Association for the

Advancement of Colored People, has made a good faith effort through a series of meetings with the defendants, as late as August 13, 1974, to resolve the matter through negotiation; only after it became apparent that a negotiated settlement was not possible and the plaintiffs became aware of the defendants' plans to proceed with an all caucasian training class to fill the fiftytwo (52) openings, did plaintiffs proceed with this action; and at that time the need for relief was so urgent that the plaintiffs reasonably concluded that the only immediate court action could provide such relief. After the commencement of this action on October 10, 1974 the plaintiffs, National Association for the Advancement of Colored People and Bruce Bailey, filed a charge of discrimination against the named defendants with the U.S. Equal Employment Opportunity Commission who deferred the charges to the Indiana Civil Rights Commission and on October 10, 1974 the Indiana Civil Rights Commission waived jurisdiction and sent the charges back to the U.S. Equal Employment Opportunity Commission. On November 4, 1974, the director of the Indianapolis district office of the U.S. Equal Employment Opportunity Commission notified the U.S. Department of Justice that it would not be possible to investigate and conciliate the charges within one hundred eighty (180) days and therefore recommended that the complainants be issued the statutory Notice of Right to Sue. On November 6, 1974 the plaintiffs received a Notice of Right to Sue from the U.S. Department of Justice. The plaintiffs do not seek an injunction as to the enforcement of the provisions of Indiana Code 1971 Section 10–1–1–4 (Burns Code Ed. 1974).

The Court has jurisdiction of the parties and subject matter of the action pursuant to Title 28 U.S.C. Section 1343(3) and (4) and, with regard to the claims under Title VI of the Civil Rights Act of 1964, pursuant to Title 42 U.S.C. Section 2000d–2; pursuant to Title 28 U.S.C. Section 1331 as the amount in controversy for each plaintiff exceeds the jurisdictional amount. The Court is authorized to issue a declaratory judgment pursuant to Title 28 U.S.C. Sections 2201 and 2202. The plaintiffs had a reasonable excuse for by-passing the United States Equal Employment Commis-

sion's proceedings and filing this action on August 26, 1974 pursuant to Title VII of the Civil Rights Act of 1964 (Title 42 U.S.C. Sections 2000e et seq.) and proceeding directly under Title 42 U.S.C. Sections 1981 and 1983 because, the United States Equal Employment Opportunity Commission administrative process under Title VII is generally unable to cope with a situation where emergency, preliminary relief is required to prevent irreparable damage; because of the fact that the defendants intended to proceed with the training class for which preliminary relief was necessary either to preserve the status quo or in the alternative, required an affirmative hiring plan; because the defendants were public employers and any relief the plaintiffs could obtain order Title VII would have to be pursuant to the 1972 Amendment to the Act which was not effective until March of 1972 and the plaintiffs could not obtain complete relief under Title VII for the discriminatory acts occurring before the year 1972 and any emergency relief pursued by the United States Equal Employment Opportunity Commission under Title VII would have to be pursuant to Section 706(f)(2) of the Act, Title 42 U.S.C. Section 2000e-5(f)(3) which provided for only "status quo" relief; and if the defendants made a compelling case for filling the fifty-two (52) openings immediately, the Court in an emergency proceeding under Section 706(f)(2) would be unable to order an affirmative hiring plan. The action was commenced only after the plaintiff, National Association for the Advancement of Colored People, made a good faith effort to resolve the matter through negotiation with the defendant, Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department, and the need for relief was urgent. The Court also has jurisdiction over this matter as of November 6, 1974 pursuant to Title VII of the Civil Rights Act of 1964, Title 42 U.S.C. Section 2000e-5(f)(3), when the United States Department of Justice issued its Notice of Right to Sue to the plaintiffs, Bruce Bailey and the National Association for the Advancement of Colored People, which was within a period shorter than one hundred eighty (180) days as authorized by Section 84.3(a) of the United States Equal Employment Opportunity Compliance Manual.

The plaintiffs have maintained the burden of proving the essential legal elements and the alleged facts of each legal element of each of the eight (8) counts of complaint as found above as to the defendants, Robert L. DeBard, individually and in his official capacity as Superintendent of the Indiana State Police Department; Norman R. Reeves, David J. Allen, E. William Schilling, Garth Whipple, John Kendall, and John Zentz, all in their official capacities as Members of the Indiana State Police Board; and The Indiana State Police. The standards and procedures of the above named defendants and of their predecessors in recruiting caucasian applicants for the position of Trooper and in not consistently and effectively recruiting negro and non-caucasian applicants for the position of Trooper as expressly found in this entry, and the procedure and requirement of the above named defendants in the use of the Otis Gamma Form C written examination which has not been professionally or otherwise validated to establish its predictive validity as a measure of actual training performance, probationary Trooper performance, and actual job performance of a Trooper all as expressly found herein; and the standards and procedure and requirements of the above named defendants in the promotions of probationary Troopers and from positions within the rank of police line officers have not been professionally or otherwise validated to establish their predictive validity as measures of actual job performance all as expressly found herein, each of which have or may have had (as in the matter of the Otis Gamma Form C test and promotion criteria which may prove nonprejudicial if a validation study be made) a discriminatory impact upon negro and other non-caucasian citizens eligible to make application for the position of Trooper with defendants and eligible for promotion from position of probationary Trooper and eligible for probation from positions within the ranks of police line officers. The above named defendants have thus discriminated against plaintiffs and the members of their class in violation of rights secured them by the Thirteenth and Fourteenth Amendments to the Constitution of the United States of America; in violation of rights secured to them by Title 42 U.S.C. Sections 1981,

1983, 1985(3), 1988, 2000d et seq., 2000e et seq. and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R. Sections 42.201–42.206 and 42.301–42.308. The plaintiffs have not maintained the burden of proving the foregoing legal elements and alleged facts of such legal elements as to the defendants, Robert L. DeBard in his official capacity as Chairman of the Law Enforcement Training Board; Richard Jones, individually and in his official capacity as Personnel Director of the Indiana State Police Department; Norman R. Reeves, individually; David J. Allen, individually; E. William Schilling, individually; Garth Whipple, individually; John Kendall, individually; John Zentz, individually; and the following defendants each as individuals and in their official capacity as members of the Indiana Law Enforcement Training Board, Evan H. Brinager, Robert R. Brown, Emory M. Bunnell, Harold Larage, William F. Lawler, Jr., Lee E. Miller, Grover C. Osborne, James R. Peva, George F. Rapp, M.D., and George W. Wise; and The Indiana Law Enforcement Training Board.

The plaintiffs are entitled to a delcaratory judgment declaring the acts and practices of those defendants and their predecessors that have been declared in violation of certain provisions of the Constitution, laws and regulations. The plaintiffs are entitled to the requested injunction against the defendants found to be in violation of plaintiffs' rights pending the consumation of the trial of the severed issues of the remedies to be adjudged and ordered.

The plaintiffs have not maintained the burden of proving the essential legal elements and the alleged facts of the remaining issues of the pleading as to all defendants and the defendants are entitled to a judgment of partial dismissal of the complaint with prejudice as to such unproved issues of the pleadings.

The action is continued and the severed undisposed of issues of the action are hereby scheduled for trial on the 1st day of October, 1975 at 9:30 AM o'clock at the United States Court House in the Indianapolis Division of the United States District Court for the Southern District of Indiana.

The parties are ORDERED to submit a proposed judgment entry in accordance with this judgment.

Dated this 31st day of July, 1975.

Cale J. Holder, District Judge,
United States District Court,
Southern District of Indiana

April 18, 1974

FROM: Richard W. Jones, Lieutenant
Personnel Section

TO: All Personnel Concerned

SUBJECT: Investigation of Trooper Applicants

Due to the fact that we have a large number of applicants to process, it is requested that the application and investigation be returned as soon as it is completed, rather than waiting until all investigations are completed.

It is requested that all investigators be thorough and concise in this process. It is vital that you explore all facets of the applicant's life, leaving no stone unturned.

To aid the investigator the following recommendations are made:

1. Do not devote too much time to his high school record if he is from a large school. Teachers would probably not remember him, and graduation has already been verified.
2. Check for areas marked in red as well as notes on the face of the application. These are questionable areas as far as we are concerned.
3. Recheck arrest record and accident frequency. If, in your opinion, the record is poor, or not as indicated, call us for an opinion.
4. All Selective Service classifications of 1–Y should be checked. This classification indicates a physical, moral, or mental problem. Ask the applicant about the reason.
5. The personal interview should be conducted as quickly as possible. Most recommendations, made by the investigator for rejection, are based upon this phase of the program.
   You will provide the applicant with a release form when you interview him. This release will provide you with the authority to check medical, selective service, and credit records.
6. Do not waste time on investigation if you discover that the applicant is totally unacceptable.

7. If the applicant's eyes do not meet our minimum requirement of 20/40, advise the applicant that he is eliminated from further consideration and return the applicant's file to the Personnel Section.
8. Each investigating officer will check local police agencies for arrest record and accident record of the applicant. *Do not* request this information from Headquarters. Records Division will check their files for information on all applicants; however, additional information is always available at a local level that sometimes is not in our central files.

Call me at Microwave #363 for any assistance you may require.

Richard W. Jones
Lieutenant

RWJ:ds

REPORT OF CHARACTER INVESTIGATION

.SSIGNED_____ NAME_____

)UE_____ ADDRESS_____

)OMPLETED_____ CITY_____

TIGATOR_____ COUNTY_____

_____

_____

eneral Character and Reputation
) Excellent ( ) Good ( ) Questionable ( ) Unacceptable

redit Standing
) Excellent ( ) Good ( ) Poor ( ) Unacceptable

obriety
) Non-drinker ( ) Mild drinker ( ) Heavy drinker

olice Record
) Nor record ( ) Traffic record ( ) Criminal record

revious Work Records
.) Excellent ( ) Good ( ) Poor ( ) Unacceptable

nvestigator's Recommendation
:) Excellent ( ) Acceptable ( ) Questionable ( ) Unacceptable

_____

_____

[illegible]: Brief written statement of applicant's general [illegible]
as established by the character investigation.
(Reverse side of this sheet may be used if necessary.)

August 18, 1975
Bruce Bailey
2115 West 10th Place
Gary, Indiana

Mr. Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

RE: Suspension of LEAA funding to the Indiana State Police Department

Dear Mr. Rice:

My name is Bruce Bailey. I am the lead plaintiff in *Bailey* v. *DeBard*, No. IP 74-458-C (S.D. Ind., filed Aug. 26, 1974), a case challenging the unlawful employment discrimination in the Indiana State Police Department.

On July 31, 1975, the Court entered a Memorandum Opinion and Judgment in which it declared unlawful: the State Police Department's use of its written tests; the Department's promotion procedures; and the Department's recruiting practices. The Court, however, has not yet entered any injunctive relief, instead, it has set October 1, 1975, as the trial date to determine the nature of the injunctive relief which should be ordered.

In its Memorandum Opinion and Judgment, the Court held that the Indiana State Police Department and its officials have "discriminated against plaintiffs and the members of their class in violation of rights secured to them by the Thirteenth and Fourteenth Amendments to the Constitution of the United States of America; in violation of rights secured to them by Title 42 U.S.C., Sections 1981, 1983, 1985 (3), 1988, 2000d et seq., 2000e et seq. and 3766(c) and the regulations promulgated thereunder as Title 28 C.F.R., Sections 42.201-42.206 and 42.301-42.308." Since no injunctive relief has yet been entered and fully complied with, the Indiana State Police Department continues to be in violation of the aforementioned laws.

Enclosed for your convenience is a copy of the Court's Memorandum Opinion and Judgment.

In accordance with the Court's findings, I hereby demand that you immediately suspend all LEAA funding to the Indiana State Police Department and that you initiate administrative proceedings to recover all LEAA monies already unlawfully spent by the Indiana State Police Department.

Sincerely,

Bruce Bailey

BB:mab
encl.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Iowa)
) ss.
County of Polk)

KRISTEN HEEMSTRA, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States and a resident of Altoona, Iowa.

3. I have been denied employment by the Des Moines, Ames, and Newton [Iowa] Police Departments.

4. The Des Moines Police Department employs approximately 360 sworn patrol officers, only one (or approximately .3%) of whom is a female.

5. For at least the past five years, to and including the present, all applicants for employment as sworn police officers with the Des Moines Police Department have been required to meet a minimum height requirement of 5'9" and a minimum weight requirement of 150 lbs. These requirements have a sexually discriminatory impact upon female applicants. Neither of these requirements has been professionally validated to determine its validity, predictive or

otherwise, as a measure of job performance for the job of patrol officer, nor have the requirements been shown to be of operational necessity to the performance of that job.

6. The Ames [Iowa] Police Department employs approximately 27 sworn patrol officers, of whom none is a female.

7. For at least the past five years, to and including the present, all applicants for employment as sworn police officers with the Ames Police Department have been required to meet a minimum height requirement of 5'9" and a minimum weight requirement of 160 lbs. These requirements have a sexually discriminatory impact upon female applicants. Neither of these requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of patrol officer, nor have the requirements been shown to be of operational necessity to the performance of that job.

8. The Newton [Iowa] Police Department employs approximately 25 sworn police officers, of whom none is a female.

9. For at least the past five years, to and including the present, all applicants for employment as sworn police officers with the Newton Police Department have been required to meet a minimum height requirement of 5'9" and a minimum weight requirement of 150 lbs. These requirements have a sexually discriminatory impact upon female applicants. Neither of these requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of police officer, nor have the requirements been shown to be of operational necessity to the performance of that job.

10. I received an AA degree from Des Moines Area Community College in May, 1974. My major was Law Enforcement, and I graduated with a cumulative grade point average of 3.98 (on a scale of 0.00–4.00; 4.00–straight A). A former high school basketball player, I stand 5' 8½" in height and weigh 130 lbs.

11. Since July 15, 1974, I have been employed as a Police Matron with the Polk County [Iowa] Sheriff's Department.

On October 9, 1975, I was assigned to the uniform patrol division of same department.

12. Anticipating my May, 1974, graduation, in January, 1974 I sought to apply for employment as a patrol officer with the Des Moines Police Department. In January, 1974, I completed a pre-application form on which I listed my height as 5'9". After reviewing my pre-application form, a representative of the Department sent me to the Ident Department to have my height measured. I was measured as 5'8-½", and was thereafter advised by a representative of the Department that I was too short to formally apply to be a patrol officer.

13. Thereafter, in February, 1974, I filed a charge with the Iowa Civil Rights Commission, and in March, 1974, with the EEOC alleging employment discrimination based upon sex against the Des Moines Police Department.

14. Several years earlier, on April 28, 1972, a similar charge had been filed with the Iowa Civil Rights Commission by another rejected applicant, Nancy Moore, against the Des Moines Police Department and Civil Service Commission alleging sex discrimination in their use of the 5'9" minimum height requirement. Shortly thereafter, an Assistant Attorney General and attorney for the Iowa Civil Rights Commission spoke by phone with Stephen Glassman, a representative of LEAA's Office of Civil Rights Compliance, urged him to initiate an investigation against the Des Moines Police Department, but was advised by Mr. Glassman that no such investigation would be or could be undertaken as Iowa was too low a priority for LEAA's Office of Civil Rights Compliance. Although the Iowa Civil Rights Commission, on Ms. Moore's complaint, ultimately held the 5'9" requirement to be sex discriminatory and ordered the Department to eliminate the height requirement, its order was subsequently mooted on appeal in the state courts.

15. I also applied for but was rejected from employment as a patrol officer with the Ames Police Department. In April 1974, I wrote to the Ames Police Department inquiring about employment as a patrol officer. By return mail I

received a printed form advising me of the necessary qualifications, including the height and weight requirements. Later that month, I drove to Ames to make a formal application for employment. At the Ames Police Department I was refused a formal application form on the grounds that I did not meet the 5'9" height requirement and the 160 lb. weight requirement.

16. In May, 1974, I filed charges with the Iowa Civil Rights Commission and with the EEOC alleging employment discrimination based upon sex against the Ames Police Department.

17. I also applied for but was denied employment as a police officer with the Newton Police Department. In recent years, I had taken and passed the civil service written test four times, most recently in September, 1974, but each time was denied employment solely because I did not meet the Department's height requirement of 5'9" and weight requirement of 150 lbs.

18. In November, 1974, I filed charges with the Iowa Civil Rights Commission and with the EEOC alleging employment discrimination based upon sex against the Newton Police Department.

19. On May 2, 1975, I filed with LEAA a charge of discrimination against the Des Moines Policy Department, the Ames Police Department and the Newton Police Department. I also charged discrimination against the Pella Police Department and the Urbandale Police Department both of which also denied me employment as a police officer. In my charge, I noted that the receipt of LEAA funding by the respective police departments was unlawful and urged LEAA to invoke its civil rights enforcement obligations immediately. [A copy of that charge is attached hereto as Exhibit A.]

20. I believe that the Des Moines Police Department has received nearly $700,000 in LEAA funding. I believe that the Des Moines Police Department currently is a recipient or subgrantee of approximately $200,000 in LEAA funding. LEAA has never suspended LEAA funding to the Des

Moines Police Department because of civil rights non-compliance.

21. I believe that the Ames Police Department currently is a recipient or subgrantee of approximately $17,000 in LEAA funding. I believe that the Newton Police Department currently is a recipient or subgrantee of approximately $40,000 in LEAA funding. LEAA has never suspended LEAA funding to either the Ames Police Department or the Newton Police Department because of civil rights non-compliance.

22. I believe that LEAA has never conducted a compliance review of nor even investigated the employment practices of any of the aforementioned Iowa police departments.

/s/_____
KRISTEN HEEMSTRA

Sworn to before me this
15th day of October, 1975.

/s/_____
DOROTHY B. SULLIVAN
Notary Public

HEEMSTRA EXHIBITS

Kristen Heemstra
200 Second Avenue, S.E.
Apartment 5
Altoona, Iowa 50009

May 1, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Re: LEAA Administrative Charge—
Sex Discrimination in Employment

Dear Mr. Rice:

I have been discriminated against on the basis of sex by several police departments. I am writing this letter to you in hopes that you will use your efforts to terminate this type of discrimination, or at least to suspend LEAA funding of the discriminatory employers—generally through your civil rights enforcement of the Safe Streets Act, and particularly through your enforcement of your Equal Rights Guidelines, G 7400.2 (March 14, 1973), reissued, G 7400.2A (June 18, 1974).

Kristen Heemstra: Complainant

In May, 1974, I received an AA degree from Des Moines Area Community College. *My major was Law Enforcement.* I had a cumulative grade point average of 3.98 (on a scale of 0. to 4.00).

Although I have frequently sought employment as a police officer, it has constantly been denied to me—because I am female and because I am 5′ 8-½″ in height and 130 lbs. in weight.

Des Moines Police Department—Respondent

The Des Moines Police Department has a minimum height requirement of 5′9″ and a minimum weight requirement of 150 lbs. It employs approximately 360 police officers, only one of whom is a woman.

In January, 1974, I attempted to apply for the position of police officer. After completing the pre-application form, I was sent to have my height measured. I was measured as 5'8-½", and was told that I therefore could not formally apply to be a police officer.

I have been advised by my attorney that the Des Moines Police Department is a current recipient of approximately $400,000 in LEAA funds.

Ames Police Department—Respondent

The Ames Police Department has a minimum height requirement of 5'9" and a minimum weight requirement of 160 lbs. It employs approximately 27 police officers, none of whom is a woman.

In April, 1974, I drove to Ames to make a formal application for employment. At the Police Department, I was refused an application form on the grounds that I did not meet the height and weight requirements.

I have been advised by my attorney that the Ames Police Department is a current recipient of approximately $17,000 in LEAA funds.

Pella Police Department—Respondent

The Pella Police Department has no height or weight requirements. It employs approximately 8 patrol officers, none of whom is a woman.

In April, 1974, I was permitted to apply for employment as a police officer. During the oral interview I was chided and laughed at for applying to be a police officer. I was not hired.

I do not know whether the Pella Police Department receives LEAA funds.

Urbandale Police Department—Respondent

The Urbandale Police Department has no height or weight requirements. It employs approximately 20 police officers, none of whom is a woman.

In April, 1974, I was permitted to apply for employment as a police officer. I passed the written test and was given an oral interview. I was not hired.

I do not know whether the Urbandale Police Department receives LEAA funds.

Newton Police Department—Respondent

The Newton Police Department has a minimum height requirement of 5'9" and a minimum weight requirement of 150 lbs. It employs approximately 25 police officers, none of whom is a woman.

I have applied for employment as a police officer, and passed the civil service test, on four separate occasions, most recently in September, 1974. In each instance I was refused employment because I am a woman and on the grounds that I did not meet the minimum height and weight requirements.

I have been advised by my attorney that the Newton Police Department is a current recipient of approximately $40,000 in LEAA funds.

Conclusion

I believe that the respondents' employment practices are unlawful and unconstitutional. I also believe that their receipt of LEAA funds is unlawful and unconstitutional. I urge you to invoke your civil rights enforcement obligations at the earliest possible date.

Sincerely,

Kristen Heemstra

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20531

January 8, 1976

Mr. E. Richard Larson
National Staff Councel
American Civil Liberties Union
22 East 40th Street
New York, New York 10015

RE: 75-C-115
Urbandale Police Department

RE: 75-C-116
Newton Police Department

RE: 75-C-117
Ames Police Department

RE: 75-C-118
Pella Police Department

RE: 75-C-119
Des Moines Police Department

Dear Mr. Larson:

As you may know, members of this Office's staff met with representatives of the Urbandale, Newton, Ames, and Des Moines Police Departments on December 2, 1975, to investigate and attempt to conciliate Ms. Kristen Heemstra's complaint of sex discrimination against each of those agencies. Because the Pella Police Department is not currently a recipient of LEAA funds, we lack jurisdiction to resolve her complaint against that department. We have asked the Iowa Crime Commission to notify us as soon as any future application for funds is received from the Pella Police Department, so that we may take appropriate action at that time.

In order to determine the appropriate remedy for each instance of alleged discrimination, we must have an indica-

tion from Ms. Heemstra as soon as possible, of her willingness to undergo the selection process, absent discriminatory devices, of each of the four police departments referred to above. This information is especially necessary to determine the appropriateness of back pay and retroactive seniority.

Please be advised that we are addressing the systemic employment practices of these departments that result in discrimination against women, such as minimum height requirements, as well as Ms. Heemstra's specific complaints of unlawful discrimination against those departments.

Should you or Ms. Heemstra have any comments or inquiries concerning this letter, please call me at (202) 376-3597.

Sincerely,

Herbert C. Rice, Director
Office of Civil Rights Compliance

BY:

Henry C. Tribble, Chief
Complaints Division
Office of Civil Rights Compliance

cc: Ms. Kristen Heemstra
200 Second Avenue S.E.
Altoona, Iowa 50009

Marvin Ruud, Regional Administrator
Kansas City, Kansas

Allen R. Way, Executive Director
Iowa Crime Commission
Des Moines, Iowa (SPA)

Kristen Heemstra
200 Second Avenue, S.E.
Altoona, Iowa 50009
February 6, 1976

Mr. Henry C. Tribble
Office of Civil Rights Compliance
United States Dept. of Justice
Law Enforcement Assistance Administration
Washington, D.C. 20531

Dear Mr. Tribble:

Thank you for your letter of January 8, 1976.

This letter is in response to your request for an indication of my "willingness to undergo the selection process" of four of the police departments which have discriminatorily denied me employment on the basis of their unvalidated minimum height and weight requirements.

At this point, my answer to your question is a conditional and tentative yes, I am willing.

At the outset, I should remind you that my educational background is in law enforcement, that I was repeatedly denied police officer employment because I am a woman, that I finally was able to secure police related employment with the Polk County Sheriffs' Department, and that I was promoted to police officer employment in October, 1975.

With this background in mind, I of course continue to be interested in law enforcement employment which is free of discrimination, which is challenging, and which offers both promotional opportunities and job security.

My tentativeness, however, stems from the pain and humiliation which I suffered by being denied employment with Urbandale, Newton, Ames, and Des Moines Police Departments. The wholesale injustice of being denied employment solely on the grounds of one's sex is an excruciating and debilitating experience. I thus have some question about returning to those Departments which so freely were allowed by you and others to discriminate against me.

My tentativeness also stems from the difficulty that a first employed female police officer initially experiences in

working on an otherwise all male force. It takes a great deal of time for the men to become used to the first female officer, to stop making solicitous or denigrating jokes, and to treat her as an equal. I've gone through this tiring process here at the Sheriffs' Department and am finally being accepted as an equal. I'm thus not too pleased with the prospect of running the gauntlet once again.

Finally, I'm most curious about whether I would be singled out for having challenged the respective Departments' sex discrimination. Nowhere in your letter do you indicate that any provisions would be made to protect me from retaliation. Your letter also fails to mention the possible availability of retroactive seniority. Indeed, your letter even fails to mention whether the Departments have in fact eliminated their discriminatory height and weight requirements.

I look forward to receiving further information from you. In the meantime, I remain tentatively willing to undergo the selection process at one or more of the Departments.

Sincerely,

Kristen Heemstra

AMERICAN CIVIL LIBERTIES UNION
22 East 40th Street
New York, New York 10016
(212) 725-1222

March 5, 1976

Mr. Henry C. Tribble
Office of Civil Rights Compliance
United States Dept. of Justice
Law Enforcement Assistance Administration
Washington, D.C. 20531

Re; Des Moines Police Department

Dear Mr. Tribble:

By letter dated January 8, 1976, you informed me that you were engaged in conciliation with the Des Moines Police Department concerning its sex discriminatory minimum height and weight requirements.

This week I received a copy of the enclosed Exam Announcement for Police Officers. The Announcement indicates that the release date was January 20, 1976; that the application deadline was February 27, 1976; and that the written exam is scheduled for March 9, 1976. I have been informed that the above dates have not been extended and that the listed qualifications have not been changed.

As you'll note, included among the required qualifications is the following: "Height—Between 5 foot 9 inches and 6 feet 4 inches with appropriate weight."

Given the above and the enclosed, I am most curious about the status of your "conciliation" with the Des Moines Police Department. I would appreciate a reply to this matter at your earliest convenience.

Sincerely,

Richard Larson
National Staff Counsel

ERL/lr

CITY OF DES MOINES
CIVIL SERVICE COMMISSION
Des Moines, Iowa 50307

EXAM ANNOUNCEMENT
For
POLICE OFFICER
(Entrance)

DUTIES:

Under direction, to patrol an assigned beat in the enforcement of law and order; to carry out special assignments in the protection of life and property; and to perform related work as required.

SALARY:

Starting salary $10,680 per year; consideration for annual increases to a maximum of $12,257 per year.

QUALIFICATIONS:

1. High School Diploma or GED
2. Between ages of 21 and 32 but not have reached 32nd birthday by date of application.
3. Vision—if glasses are worn 20/20 or better in both eyes. 20/100 in each if correctable to 20/20.
4. Height—Between 5 foot 9 inches and 6 feet 4 inches with appropriate weight.
5. Possession of a valid motor vehicle operator's license issued by the State of Iowa.

METHOD OF EXAM:

Written Examination: 6:30 p.m., March 9, 1976 (and March 10 if more than 100 candidates apply). To be held at the Regional Police Academy, 433 Army Post Road, Des Moines, Iowa.

Physical Agility: 7:00 p.m., March 11, 1976. To be held at the Drake University Fieldhouse, 27th and Forest, Des Moines, Iowa (use the northeast door on 27th).

Physical Examination: Successful candidates of the patrolman exams will be notified by the Police and Fire Retirement Board, and told when and where to appear. The examination cost will be paid by the Retirement Board.

Oral Interview: To be held before the Civil Service Commission—date to be announced.

PURPOSE OF EXAM:

To fill existing vacancies, and to establish an eligible list.

HOW TO APPLY:

Apply at the Police Personnel Unit, First Floor, Municipal Court Building, East First and Court Avenue—8:00 a.m. to 5:00 p.m., Monday through Friday.

APPLICATION DEADLINE:

5:00 p.m., February 27, 1976.

CITY OF DES MOINES
CIVIL SERVICE COMMISSION

City Hall/East 1st and Locust Streets
Des Moines, Iowa 50307

439

CITY OF DES MOINES

The City of Des Moines employs approximately 1,900 persons with 1,331 under the Civil Service system. The many different departments provide a variety of community services including police and fire protection, health, building inspection, park and recreation facilities, street construction and maintenance, sanitation, engineering, planning, and zoning functions.

As a City employee you may work in City Hall, the Armory Building, the Municipal Court Building, or in various other offices and shops located throughout the City to better serve the public.

JOB SECURITY

All permanent Civil Service employees are afforded the protection of rules which allow demotion, suspension, or discharge only for cause, and insure the right of a hearing on all such charges.

ADVANCEMENT OPPORTUNITIES

The salary range stated on the front of this announcement indicates the minimum and maximum salary for the announced position. Annual increases are granted for satisfactory service on the anniversary date of your employment. In addition, most positions provide an increase after completion of a six month probationary period.

Many promotional opportunities exist in the City service, which are based on ability, as measured by competitive examinations. The system provides over one hundred promotional classifications which are only open to City employees, and the exception is for employees who meet the minimum qualifications to compete in entrance examinations for higher level positions.

VACATIONS, HOLIDAYS AND SICK LEAVE

All permanent City employees earn two weeks of paid vacation each year. After seven years of continuous employment the annual vacation is three weeks, after fifteen years it is increased to four weeks a year, and upon completion of twenty-five years of service an employee receives five weeks annually.

The City observes nine paid holidays a year, and all permanent employees accrue twelve days sick leave per year with unused portions cumulative. Sick leave accumulations over twelve days are payable at the rate of 50% at the time of retirement or death.

Permanent employees who become incapacitated as a result of injury or occupational disease incurred through no misconduct of their own while in actual performance of duty can receive up to six months full pay. If disabled for longer than six months, reduced benefits are provided.

INSURANCE

Employees are provided group hospital and medical insurance with major medical benefits to a maximum of $250,000. The cost of this program, including dependent coverage, is borne by the City. Employee group life insurance is also provided at no cost.

EXCELLENT RETIREMENT PLAN

Permanent city employees, with the exception of policemen and firemen, contribute 3 1/2% of their first $10,800 of annual earnings to a State administrated retirement fund and the City matches their contributions. If the employee leaves City employment prior to retirement, his contribution is refunded with interest and interest dividends.

A normal retirement benefit is provided at age sixty five (65) after eight (8) years of service. An employee may retire at age fifty five (55) and receive reduced benefits.

Policemen and firemen contribute a percentage of their salary to their own retirement systems. This percentage is determined by their age at the time of employment. The minimum rate of contribution is 4.21%. The contribution is refunded plus interest, upon termination for reasons other than death or retirement.

Policemen and firemen are also provided with death and disability benefits. Their retirement is required upon attaining the age of sixty five (65) years, with provisions for one year extensions.

HOW WE HIRE

Applications can be obtained at room 106 City Hall, East First at Locust Street, or by calling AC 515 283 4213. Completed applications must be returned by mail or in person by the closing date stated on the front of this announcement.

A competitive examination may be given which usually includes several parts. The type of selection process to be used is stated on this announcement. In addition, a satisfactory physical examination may be required before appointment to a position. Any serious medical condition may be cause for disqualification.

After successful completion of all parts of the selection process, candidates with the highest ranking are placed on an eligible list in order of their rank. Eligible lists are limited to a maximum of the ten highest candidates. Qualified veterans who have been placed on an eligible list may claim selection preference under Iowa law by presenting their discharge papers. Vacancies are filled from the eligible list until depleted or until the next examining cycle which begins in April of each year.

It is the policy of the City of Des Moines to seek the best qualified applicants for every job and to provide equal opportunity for all persons to compete for employment with the City.

WHAT WE REQUIRE

Residence: City residence is not required at the time of application or after employment. However, sworn officers in the Police Department and uniformed personnel in the Fire Department must live within twenty miles of the corporate limits of the City of Des Moines.

Age: There are no age requirements unless otherwise stated in this announcement.

Citizenship: Applicants must be citizens of the United States. Foreign born applicants must present proof of citizenship before they can be appointed to a position.

The Civil Service Commission reserves the right to refuse to examine an applicant, to remove his name from an eligible list, or refuse to certify an eligible, who for good and sufficient reason is deemed undesirable for public employment. In addition, the Commission acknowledges its responsibility to refuse employment to persons who do not meet the employment qualifications specified by the Code of Iowa.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS

AFFIDAVIT

State of California)
) ss.
County of Alameda)

KENT G. McKINNEY, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Oakland, California.

3. I am a former Oakland police officer and was discriminatorily forced to resign by the Oakland Police Department.

4. The Oakland Police Department currently employs approximately 708 sworn police officers, of whom 91 (or 12.8%) are black. (Only one police officer is a woman.) According to the 1970 census, the population of the City of Oakland was 34.7% black. I believe that the current population of the City of Oakland is approximately 45% black.

5. All but six of the black officers hold the entry-level rank of police officer. Of approximately 125 sergeants, only five (or approximately 4.0%) are black. Of the 32 lieutenants only one (or 3.1%) is black. Of the 12 captains, none is black. One of the deputy chiefs is black.

6. Applicants for entry-level employment as a police officer are required to pass a written test, among other requirements. I believe that the written test has had a racially discriminatory impact against black applicants. The written test has never been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of police officer.

7. Upon hiring, police officers are required to attend a training program and are employed for one year in a probationary status. A disproportionate number of black officers have been discharged during training and during probation for reasons unrelated to successful job performance. For example, in my training class, there initially were 22 recruits, 9 of whom were black; at the conclusion of the training program, only 11 recruits had not been screened out, of whom only one (me) was black.

8. Police officers who seek promotion to the rank of sergeant must have three years of experience (weighted 10%), must pass a written test (weighted 60%) and must pass a subjectively administered oral interview (weighted 30%). The most recent examination was administered in May, 1975. Of the approximately 225 whites who took the test, 44 (or approximately 19%) passed; of the 36 blacks who took the test, only three (or 8%) passed. None of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of sergeant.

9. Police officers who seek promotion to the rank of lieutenant must be employed for 2 years as sergeant, and must pass a written test and oral interview. Each of these requirements has had a discriminatory effect upon blacks. None of these requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of lieutenant.

10. I began my employment as a Oakland police officer in August, 1973. At that time, I was one of the few Oakland police officers who was a college graduate. I was also one of the few Oakland police officers (probably the only one) to hold a black belt in "Tae Kwon Do," a Korean style

marshall art, and to teach the art of self defense and personal safety at a local training gym.

11. In June, 1974, I was forced to resign during my probationary period because of an alleged casual demeanor and lack of safety consciousness.

12. In August, 1974, the Oakland Black Officers Association (through its President Raymond Clark) and I filed charges of discrimination against the Oakland Police Department with LEAA. In those charges, we complained of my discriminatory discharge and enumerated other discriminatory employment practices of the Oakland Police Department. (A copy of those charges is attached hereto as Exhibit A.)

13. Our charge was not the first complaint filed with LEAA against the Oakland Police Department. In April, 1973, an eighteen-page administrative complaint was filed with LEAA against Oakland and eighteen other California cities. That complaint, which was filed by a coalition of seven civil rights organizations, detailed the aforementioned discriminatory employment practices of the Oakland Police Department, noted that Oakland had received $738,672 in LEAA funding in 1971 and 1972, and sought the "termination or suspension" of LEAA funding. (A copy of the complaint is attached hereto as Exhibit B.)

14. To the best of my knowledge, LEAA, in response to the coalition's LEAA complaint, requested information from the Oakland Police Department about its employment practices, but declined to conduct an on-site field investigation into those practices. To the best of my knowledge, in response to my complaint, LEAA, in the fall of 1974, did conduct an on-site field investigation into the employment practices of the Oakland Police Department. However, I have not heard from LEAA since that time, well over a year ago.

15. I believe that LEAA monies have continued to flow into the Oakland Police Department unabated. In the past

five years, I believe that the Oakland Police Department has received approximately $1,000,000 in LEAA funding.

/s/ _____
KENT G. MCKINNEY

Sworn to before me this
day of October, 1975

/s/_____
Notary Public

McKINNEY EXHIBIT

CLIFFORD SWEET
JULIA BLACKWELL
MALCOLM HUNTER
LEGAL AID SOCIETY OF ALAMEDA COUNTY
1815 Telegraph Avenue
Oakland, California 94612
Telephone: 451-6920
Attorney for Complainants

UNITED STATES DEPARTMENT OF JUSTICE

IN RE RACE DISCRIMINATION IN EMPLOYMENT IN CONTRAVENTION OF THE 14TH AMENDMENT, U.S. CONSTITUTION AND TITLE 28 C.F.R. SS 42.201 *et seq.*, as amended August 18, 1972

KENT G. McKINNEY, individually and on behalf of all others similarly situated and the OAKLAND BLACK OFFICERS ASSOCIATION, COMPLAINANTS.

ADMINISTRATIVE COMPLAINT

I

This is an administrative complaint brought by KENT G. McKINNEY, individually and on behalf of all others similarly situated, and by the OAKLAND BLACK OFFICERS ASSOCIATION, as representatives of racial and ethnic employees with the Oakland Police Department in the position of Police Officer.

The purpose of the complaint is to mandate the Attorney General, the Department of justice and the Administrator of the Law Enforcement Assistance Administration (hereinafter LEAA) to enforce the non-discriminatory requirements of the 14th Amendment, U.S. Constitution and Title C.F.R. SS42.201 *et seq.*, as they apply to the employment practices and training policies of the Oakland Police Department.

II

The 14th Amendment, U.S. Constitution requires that the several States not deny the equal protection of the laws to any person within their jurisdiction. Department of Justice regulations, 28 C.F.R. SS42.201 *et seq.*, were promulgated to enforce that Amendment by eliminating discrimination on the grounds of race in the employment practices of State agencies or offices receiving financial assistance extended by the Department of Justice under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, (hereinafter the Safe Streets Act.) The Attorney General and his delegate, the Administrator of LEAA, have the principal responsibility for the enforcement of the provisions of the above cited regulations.

III

At the time of the filing of this Complaint and at all times mentioned herein, the Oakland Police Department, California was in receipt of, or will receive Federal financial assistance from the Department of Justice under Title I of the Safe Streets Act.

IV

Complainaint, KENT G. MCKINNEY, is a Black male with a B.A. degree in Sociology from the University of California, Hayward, California. Complainant holds a Black Belt in "Tae Kwon Do", a Korean style marshall art. Complainant served on the Oakland Police Department for ten (10) months prior to his forced resignation on June 3,

Complainant, OAKLAND BLACK OFFICERS ASSOCIATION, is a police organization within the Oakland Police Department and has as one of its purposes, to secure equal employment rights for all racial minorities and females in all segments of the Oakland Police Department.

V

Complainants bring this Complaint on behalf of themselves and (a) all racial minorities who would be eligible for, and interested in, positions as Police Officers with the Oakland Police Department, but are denied the job oppor-

tunity because of the recruit training program that is adminsitered by the City of Oakland.

As a former Black male recruit with the Oakland Police Department, complainant KENT G. McKINNEY is within the class of persons beneficially interested in the faithful performance of the legal duty of the Oakland Police Department, the City of Oakland, and Oakland Police adviser, JAMES M. NEE, under the Oakland Police Department's Affirmative Acton Program and the laws and regulations set forth hereinabove, and in the outcome of this Administrative Complaint.

VI

The City of Oakland Civil Service Board of Commissioners, pursuant to Oakland City Charter Article XIII, Sections 70–84, is responsible for the administration of the City of Oakland Civil Services system. Included within the duties of the Oakland Civil Service Commission, is the setting of the standards and procedures for the selection of persons for positions as officers with the Oakland Police Department, and the development of an effective affirmative action program under LEAA regulations to properly train, upgrade and promote racial minority and female persons within the Oakland Police Department.

VII

KENT G. McKINNEY was employed as a Police Officer with the City of Oakland, California until June 3, 1974.

On June 3, 1974, KENT G. McKINNEY was advised that he had a choice of resigning or being fired from the Oakland Police Department because of his alleged lack of safety consciousness and casual demeanor, even thought he holds a Black Belt in "Tae Kwon Do" a Korean style marshall art, and is instructor in a training gym where he teaches the art of self-defense and safety.

On June 14, 1974, the Oakland Police Officers met with Oakland Chief of Police, GEORGE HART, and requested that he review KENT McKINNEY's termination and reverse that decision.

On June 26, 1974, KENT McKINNEY was informed by Oakland Police Chief, GEORGE HART that KENT McKINNEY would not be rehired.

On July 2, 1974, KENT G. McKINNEY was further advised by a letter from the City Manager, addressed to the N.A.A.C.P. (Oakland, California chapter) that KENT G. McKINNEY's performance in recruit school was unsatisfactory. The correspondence to the N.A.A.C.P. is attached as Exhibit "A".

VIII

KENT G. McKINNEY and the OAKLAND BLACK OFFICERS ASSOCIATION, add that:

1. KENT G. McKINNEY worked with and around competent Black Police Officers who allege that he had no problems that could not be corrected with additional police experience.

2. KENT G. McKINNEY was arbitrarily denied the request that he be allowed to ride with an Oakland Black Police Officer with six years' experience who indicated KENT McKINNEY could become an asset to the Oakland Police Department.

3. The field training officer who supervised KENT McKINNEY was biased, had limited training skills and KENT McKINNEY was his first trainee.

4. The Oakland Police Department has no valid criteria for selecting field training officers, nor are they given proper training prior to their assignment as field training officers.

5. The Oakland Police Department's training program has a discriminatory effect upon racial minorities because from August 6, 1973 through January 4, 1974, the Oakland Police recruitment records show that 31.3% of racial minorities failed the training program as compared to 10.7% of the Caucasian recruits, and racial minorities represented 39.8% of the recruits but 65.9% of the failures during this period.

6. That success in the Oakland Police Department's Recruit School is largely dependent upon the teaching skills of

the training officers and is not wholly reflective of the abilities of minority recruits.

7. KENT G. McKINNEY's termination is in violation of the Oakland Police Department's Affirmative Action Plan, as required by LEAA regulations in that KENT McKINNEY was not given the proper supervision and training under that plan.

8. The Affirmative Action Plan of the Oakland Police Department is in violation of Federal law and LEAA regulations in that the plan:

a) Omits utilization analyses and fails to identify specific problem areas, such as recruit training;

b) Does not establish target dates for initiation and completion of corrective actions;

c) Does not have a provision for annual review;

d) Has no realistic goals for employment of women and racial minorities;

e) Has not instituted any affirmative action related training in the Police Department.

9. As the result of the circumstances described in this complaint and other reasons, KENT G. McKINNEY, the OAKLAND BLACK OFFICERS ASSOCIATION and the class they represent have been systematically and effectively denied the opportunity to be employed with the Oakland Police Department.

IX

KENT G. McKINNEY alleges that the Police Recruit Training Program of the City of Oakland has not been validated by any independent validation study as required by LEAA regulations under Title 28 Section 42.303, 42.304(D) and 42.304(c)(1).

X

At all times herein mentioned, the City of Oakland performs the duties, as set forth above but, notwithstanding such ability and despite KENT G. McKINNEY demand, the City of Oakland has failed and refused, and continues to fail and refuse to perform their duties to hire him for em-

ployment as a Police Officer and to validate their police recruit training program. Unless compelled by this agency to do these acts required by 28 C.F.R. SS201 *et seq.*, respondents will continue to fail and refuse to do so.

WHEREFORE, complainants request the following relief:

1. That a prompt investigation of this complaint be made, pursuant to 28 C.F.R. §42.107(c);

2. That judicial proceedings be instituted pursuant to 28 C.F.R. §42.206 (a) to achieve compliance with 28 C.F.R. §§42.201 *et seq.*, or, in the alternative;

3. That the necessary administrative proceedings be instituted to suspend, terminate, refuse to grant or continue Federal financial assistance where a failure or threatened failure of compliance with the above cited regulations appear;

4. That Respondents file assurances, pursuant to 28 C.F.R. 42.204 that the requirements of the above cited regulations will be complied with;

5. That the Attorney General require and Respondents furnish compliance reports pursuant to 28 C.F.R. §§42.205 and 106(b) that such requirements are actually being complied with, and

6. For such other and further relief as is deemed necessary to guarantee complainants the benefits and protections guaranteed by the 14th Amendment, U.S. Constitution and 28 C.F.R. SS42.201 *et seq.*

Dated: August 8, 1974.

/s/_____

CLIFFORD SWEET
Attorney for Complainants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Oregon)
) ss;
County of Washington)

PENNY ORAZETTI, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States and a resident of Beaverton, Oregon.

3. I am a member and former officer of the International Association of Women Police.

4. I have been discriminated against by the Portland [Oregon] Police Bureau.

5. The Portland Police Bureau employs approximately 730 sworn police officers, of whom only 27 (or approximately 3.0%) are women.

6. Until 1973, the Portland Police Bureau maintained separate job classifications for female officers and male officers: female officers were classified as "policewomen" and male officers as "policemen." Until 1973, there were only 18 authorized entry-level and promotional positions for police-

women, and approximately 700 entry-level and promotional positions for policemen.

7. Until 1973, policewomen were paid less than policemen (deemed to be "specialists") performing the same work. Most policewomen were permanently assigned to the Women's Protective Division although they frequently received temporary assignments to work alongside policemen on narcotics cases, in the Juvenile Division, and in undercover investigative work.

8. I became a policewoman with the Portland Police Bureau in 1964. At that time women were required to have a college degree although men needed only a high school diploma or G.E.D.

9. Shortly after I learned that policemen (deemed "specialists") were being paid higher salaries than policewomen performing the same work, I complained to the Bureau's Personnel Division. I was told not to rock the boat and was threatened with termination.

10. In June, 1968, I applied to take the promotion examination for detective. In July, 1968, my application was denied on the grounds that the promotion examination was open only to policemen and I was a policewoman. Shortly thereafter, I was assigned to secretarial duties as punishment.

11. During the next four years, I was denied other promotions, was denied access to transfers, was denied official or vacation leave for an IAWP convention, and was in other ways discriminatorily harassed.

12. My sister Roberta Ledyard became a policewoman with the Portland Police Bureau in July, 1971. In the fall of 1971, she attended the Police Academy with 42 policemen, graduating number one in her class. Although the policemen thereafter received assignments throughout the police department, she, over her objection, was assigned to the Women's Protective Division.

13. Like me, my sister, during the next few years, sometimes worked on special assignments alongside policemen, but she was denied equal pay, was denied transfers and was in other ways discriminatorily harassed.

14. In December 1972, my sister and I, and nine other policewomen filed union grievances alleging sexually discriminatory denial of equal pay and transfer rights. In January 1973, my sister and I, various other policewomen, and several rejected applicants, filed sex discrimination charges against the Portland Police Bureau with the Oregon Civil Rights Division and with the EEOC. The various charges challenged the Bureau's discriminatory recruitment, hiring, assignments, and transfers, among other sexually discriminatory practices.

15. During the spring and summer of 1973, the Portland Police Bureau eliminated its sex segregated classifications of policewoman and policeman; it opened previously male positions to female applicants; and it agreed to provide equal pay to female police officers. It, however, denied retroactive back pay prior to January 1, 1973, to the female police officers; it subsequently lowered the pay of all police officers to that previously paid to policewomen; it refused to direct recruitment to attract female officers; it required applicants to pass discriminatory and non-job-related physical agility tests; it refused to provide additional training to female officers; and it continued to penalize female officers for lack of patrol experience (denied to women before 1973) in promotional examinations. And in August, 1973, although the Bureau appointed me as Project Director of an LEEA funded project, it paid me a lower salary than the previous Project Director, a male officer. These practices among others have been the subjects of additional sex discrimination charges filed with the Oregon Civil Rights Division and the EEOC.

16. The sexually discriminatory history and current practices of the Portland Police Bureau are well known to LEAA. In December 1972, a four-person investigative team from LEAA conducted a civil rights compliance review of the Portland Police Bureau's employment practices. During that compliance review, my sister and I spoke with the investigators, discussed the filing of administrative charges with LEAA, and were told by the investigators that such was unnecessary because of the compliance review and because LEAA "would never deny LEAA funds

to an agency because of discrimination . . . and everyone including Portland's Mayor and the Chief knew that."

17. In a letter dated January 31, 1973, Herbert C. Rice advised the Portland Civil Service Board that the Portland Police Bureau was not in compliance with the LEAA nondiscrimination regulations, and that four "immediate steps" were "require[d]"; (1) that the position of policewoman be abolished; (2) that female officers be given equal opportunity for promotion; (3) that previously denied training be given to female officers to allow them "to fairly compete in promotional examinations"; and (4) that a "new recruiting effort" be undertaken to attract female applicants. [A copy of that determination letter is attached hereto as Exhibit A.]

18. In March, 1973, and again in the summer of 1974, several members of LEAA's compliance review team unsuccessfully sought to obtain civil rights compliance from Portland officials and, I believe, from the chief executive of the State of Oregon. Of the four requirements set forth in Mr. Rice's determination letter, only the first was ultimately complied with (on June 22, 1973, the position of policewoman was abolished). The other requirements have not yet been complied with, and other discriminatory practices, set forth above, have also continued.

19. I believe that the Portland Police Bureau has received more than $5,000,000 in LEAA funding. LEAA has never suspended LEAA funding to the Portland Police Bureau for civil rights non-compliance.

/s/_____
PENNY ORAZETTI

Sworn to before me this
6th day of November, 1975.

/s/_____
Notary Public

ORAZETTI EXHIBIT

January 31, 1973

Chief Donald I. McNamara
Bureau of Police
222 S.W. Pine Street
Portland, Oregon 97204

Dear Chief McNamara:

As you know, the civil rights compliance review team from this office has completed their on-site survey of your bureau. We greatly appreciate the cordial reception and generous time permitted the team not only by the personnel of the Bureau of Police and the Civil Service Board, but other State and City officials as well as the citizens of Portland.

As explained in our initial meeting, we would be responding by letter outlining the major areas of concern. We understand that you are giving consideration to some of these issues, and that some of these suggested changes may be implemented in the very near future. Specifically, our recommendations fall into four categories: minority recruiting, qualifications, sex discrimination and complaints.

We are fully aware of your efforts in the past to recruit minorities, however, the facts remain that the minority representation among the sworn officers is only 9.7% of the total force, in a city with a 6% minority population.

Therefore, we recommend that an immediate commitment be made to planning and assigning personnel to an affirmative recruiting program designed to attract racial minorities to the Bureau of Police.

Closely related to the area of recruiting is that of minimum qualifications for employment. Because the minority applicant flow has not been large enough to determine if there is a differential impact in your recruiting and qualifying devices, we recommend that:

1. As minorities are recruited, evidence be collected to determine if the examination process has a disparate impact on minorities.
2. It be clearly publicized that the educational entrance requirement is a high school diploma or equivalent,

and that an equal opportunity be given to all members of the police force to fulfill subsequent and conditional educational requirements.

It is our understanding that there are only 18 sworn female officers among the 738 officers of the Bureau of Police. We must require that immediate steps be taken to upgrade the status of women in the department to assure compliance with the external Equal Employment Opportunity Regulations of the Law Enforcement Assistance Administration (28 C.F.R., 42.201, et. seq. subpart D), by:

1. The position of policewoman should be abolished, and females as well as males, should be processed for all positions within the police force except those where sex can be shown to be a bona fide occupational qualification.

2. Present employees in the position of policewoman should be given an equitable opportunity for promotions in the department.

3. The requisite training necessary to fairly compete in promotional examinations be provided for the female officers who were denied this standard training in the Police Academy.

4. As part of a new recruiting effort, it be clearly publicized that the applications of women will be accepted on a non-discriminatory basis.

Finally, the review team ascertained that adequate records were not kept relative to the resolution of complaints both internal and from citizens. We recommend that an adequate system be adopted.

Members of our team will be available for consultation in Portland during the first part of March, 1973. In any case, we expect an initial report of the preliminary steps taken in

accordance with the recommendations in this letter by April 1, 1973.

Sincerely,

HERBERT C. RICE, Director
Office of Civil Rights Compliance

cc: Mayor Neil H. Goldschmidt
Mr. George R. McDonald, Director
Portland Civil Service Board
Mr. Peter Meany, SPA
Mr. David Head, Reg. Admin.
LEAA—Seattle REgional Office
Mr. Mike Dallich

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL.,
PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Oregon)
) ss.
County of Multnomah)

ROBERTA LEDYARD, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States and a resident of Portland, Oregon.

3. I am a member of the International Association of Women Police.

4. I have been discriminated against by the Portland [Oregon] Police Bureau.

5. The Portland Police Bureau employs approximately 730 sworn police officers, of whom only 27 (or approximately 3.0%) are women.

6. Until 1973, the Portland Police Bureau maintained separate job classifications for female officers and male officers: female officers were classified as "policewomen" and male officers as "policemen." Until 1973, there were only 18 authorized entry-level and promotional positions for policewomen, and approximately 700 entry-level and promotional positions for policemen.

7. Until 1973, policewomen were paid less than policemen (deemed to be "specialists") performing the same work. Most policewomen were permanently assigned to the Women's Protective Division although they frequently received temporary assignments to work alongside policemen on narcotics cases, in the Juvenile Division, and in undercover investigative work.

8. My sister, Penny Orazetti, became a policewoman with the Portland Police Bureau in 1964.

9. I became a policewoman with the Portland Police Bureau in July, 1971. In the fall of 1971, I attended the Police Academy with 42 policemen, graduating number one in my class. Although the policemen thereafter received assignments throughout the police department, I, over my objection, was assigned to the women's Protective Division.

10. During the next few years, I sometimes worked on special assignments alongside policemen, but was denied equal pay, was denied transfers and was in other ways discriminatorily harassed.

11. In December 1972, my sister and I, and nine other policewomen filed union grievances alleging sexually discriminatory denial of equal pay and transfer rights. In January 1973, my sister and I, various other policewomen, and several rejected applicants, filed sex discrimination charges against the Portland Police Bureau with the Oregon Civil Rights Division and with the EEOC. The various charges challenged the Bureau's discriminatory recruitment, hiring, assignments, and transfers, among other sexually discriminatory practices.

12. During the spring and summer of 1973, the Portland Police Bureau eliminated its sex segregated classifications of policewoman and policeman; it opened previously male positions to female applicants; and it agreed to provide equal pay to female police officers. It, however, denied retroactive back pay prior to January 1, 1973, to the female police officers, it subsequently lowered the pay of all police officers to that previously paid to policewomen; it refused to direct recruitment to attract female officers; it required applicants to pass discriminatory and non-job-related phys-

ical agility tests; it refused to provide additional training to female officers; and it continued to penalize female officers for lack of patrol experience (denied to women before 1973) in promotional examinations. And in August, 1973, although the Bureau appointed my sister as Project Director of an LEAA funded project, it paid her a lower salary than the previous Project Director, a male officer. These practices among others have been the subjects of additional sex discrimination charges filed with the Oregon Civil Rights Division and the EEOC.

13. The sexually discriminatory history and current practices of the Portland Police Bureau are well known to LEAA. In December 1972, a four-person investigative team from LEAA conducted a civil rights compliance review of the Portland Police Bureau's employment practices. During that compliance review, my sister and I spoke with the investigators, discussed the filing of administrative charges with LEAA, and were told by the investigators that such was unnecessary because of the compliance review and because LEAA "would never deny LEAA funds to an agency because of discrimination . . . and everyone including Portland's Mayor and the Chief knew that."

14. In a letter dated January 31, 1973, Herbert C. Rice advised the Portland Civil Service Board that the Portland Police Bureau was not in compliance with the LEAA nondiscrimination regulations, and that four "immediate steps" were "require[d]": (1) that the position of policewoman be abolished: (2) that female officers be given equal opportunity for promotion; (3) that previously denied training be given to female officers to allow them "to fairly compete in promotional examinations"; and (4) that a "new recruiting effort" be undertaken to attract female applicants. [A copy of that letter is attached hereto as Exhibit A.]

15. In March, 1973, and again in the summer of 1974, several members of LEAA's compliance review team unsuccessfully sought to obtain civil rights compliance from Portland officials and, I believe, from the chief executive of the State of Oregon. Of the four requirements set forth in Mr. Rice's determination letter, only the first was ultimate-

ly complied with (on June 22, 1973, the position of policewoman was abolished). The other requirements have not yet been complied with, and other discriminatory practices, set forth above, have also continued.

16. I believe that the Portland Police Bureau has received more than $5,000,000 in LEAA funding. LEAA has never suspended LEAA funding to the Portland Police Bureau for civil rights non-compliance.

/s/_____
ROBERTA LEDYARD

Sworn to before me this
5th day of November, 1975.

/s/_____
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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75 Civ. 1444

Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Michigan)
) ss.
County of Wayne)

ROBERT BOOTH, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a black citizen of the United States and a resident of Detroit, Michigan.

3. I am Vice President of the Guardians of Michigan (a member organization of the National Black Police Association).

4. I have been discriminated against by the Wayne County Sheriff's Department.

5. The Wayne County Sheriff's Department employs approximately 525 duly appointed deputy sheriffs, of whom 149 (or 28%) are black persons. According to the 1970 census, the population of Wayne County was 27% black. I believe that the current population of Wayne County is 30% black.

6. Above the entry-level rank of patrolman, however, there are very few ranks filled by black deputy sheriffs. Of 29 detectives, there are only 3 (or 10.3%) black detectives; of 40 sergeants, there are only 7 (or 17.5%) black sergeants;

there are only 5 black lieutenants; and of 7 deputy inspectors, there are no black deputy inspectors.

7. Until as recently as 1965, most black deputy sheriffs received patrol assignments and other duties on a racial basis. Moreover, most all provisional appointments to promotional ranks were given to white deputy sheriffs, almost totally excluding blacks from the promotional ranks.

8. Deputy sheriffs who seek promotion to the rank of detective or of sergeant must have 4 years experience as a deputy sheriff and must rank high on an examination consisting of a written test, a subjective oral interview, and a subjective evaluation. The most recent examinations, administered in August, 1974 and in November, 1974, discriminated so heavily against blacks so as to totally preclude their eligibility for appointment to the ranks of detective or sergeant. None of these promotional requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the jobs of detective or sergeant.

9. Deputy sheriffs who seek promotion to the rank of deputy inspector must have attained permanent status as a lieutenant, and must pass an examination consisting solely of subjective oral interview. In the most recent examination, administered in December, 1978, all black applicants were eliminated. None of the above requirements has been professionally validated to determine its validity, predictive or otherwise, as a measure of job performance for the job of deputy inspector.

10. I am a fifteen-year veteran of the Wayne County Sheriff's Department currently holding the entry-level position of patrolman. I have repeatedly applied for but been denied promotion to the ranks of detective and sergeant. In September, 1974, July, 1973, and March, 1969, I was denied promotion to detective on the grounds that I had failed to rank high enough on the promotion criteria. In February, 1975, October, 1973, November, 1970, and April, 1967, I was denied promotion to sergeant on the grounds that I had failed to rank high enough on the promotion criteria.

11. On October 4, 1974, another black deputy sheriff, the Guardians of Michigan; and I filed an action on the Circuit Court of Wayne County alleging unlawful racial discrimination in violation of §17.458(3)(a) of Mich. Stat. Ann., and of Article I, §2 of the Michigan Constitution, against various officials of Wayne County, *Hawkins* v. *Lucas*, 74–032928 (Cit. Ct. of Wayne Cty., Mich., filed Oct. 4, 1974).

12. On November 18, 1974, other black deputy sheriffs, the Guardians of Michigan, and I filed a class action complaint in the United States District Court for the Eastern District of Michigan alleging unlawful racial discrimination in violation of 42 U.S.C. §1981, §1983, §1985, §1988 against, among others, various officials of Wayne County, *Reed* v. *Lucas*, 74–72798 (E.D. Mich. filed Nov. 18, 1974).

13. In April, 1975, a colleague of mine, Bobby Hawkins, a named plaintiff in both *Hawkins* and *Reed*, filed with LEAA a charge of discrimination detailing the unlawful employment discrimination in the Wayne County Sheriff's Department. I believe that LEAA declined to conduct an investigation into the charge filed against the Wayne County Sheriff's Department. (A copy of the charge is attached hereto as Exhibit A.)

14. On July 16, 1975, the United States District Court granted our motion for a preliminary injunction in *Reed* v. *Lucas*, *supra*, stating that we were likely to succeed on the merits, and ordering that "one of every two persons promoted to detective and to deputy inspector must be a member of the black race." (A copy of the Court's Memorandum Opinion and Order is attached hereto as Exhibit B.)

15. Discovery is continuing in *Reed* v. *Lucas*, *supra*, and I do not anticipate trial on the merits before the winter of 1975–1976.

16. In August, 1975, the Guardians of Michigan and I filed with LEAA a charge of discrimination against the Wayne County Sheriff's Department. I enclosed a copy of the Court's Memorandum Opinion and Order in *Reed* v. *Lucas*, *supra*, and urged LEAA to "immediately suspend all LEAA funding to Wayne County Sheriff's Department and [to] immediately initiate proceedings to recover all

unlawfully spent LEAA monies." I have received no response to my charge. (A copy of the charge is attached hereto as Exhibit C.)

17. I believe that the Wayne County Sheriff's Department has received approximately $3,830,000 in LEAA funds since 1970, and that the Department currently is a recipient or sub-grantee of approximately $871,000 in LEAA funds. LEAA has never suspended or terminated the LEAA funding of the Wayne County Sheriff's Department because of civil rights non-compliance.

/s/_____
ROBERT BOOTH

Sworn to before me this
15th day of October, 1975.

/s/_____
FRED C. BATTACHI
Notary Public

My Commission Expires March 13, 1976

We, the undersigned black deputies of the Wayne County Sheriff's Department, are concerned about irregularities in our Department. There are several Federally funded projects which have no black officers, specifically the Computer Section, Marine Division, Detective Bureau and Polygraph Section. We are conspiciously underrepresented in the Reception Diagnostic Center, Organized Crime Division and in other Federally funded areas.

We are calling this to your attention, for we feel that the insufficient representation of blacks in the above mentioned areas indicates discriminatory practices on the part of the Wayne County Sheriff's Office. The basis of our allegations is found in the legislation of Title VI and VII of the 1964 Civil Rights Act and in the Omnibus Crime Control and Safe Streets Act of 1973. A review of these laws would indicate that they specifically prohibit discrimination on the basis of race, color, national origin, or sex. As you know, violation of the provision of these laws would result in a loss of Federal funds.

We herein respectfully request that your office investigate this matter.

Sincerely,

/s/ Robert Hawkins

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 74-72798

HENRY REED, ET. AL., PLAINTIFFS,

v.

WILLIAM LUCAS, ET AL., DEFENDANTS.

ORDER GRANTING PRELIMINARY INJUNCTIVE RELIEF

At a session of said court held in the Federal Building and U.S. Courthouse, Detroit, Michigan, on July 16, 1975.

Present: HONORABLE JAMES P. CHURCHILL
United States District Judge

Having conducted an evidentiary hearing on plaintiffs' Motion for Preliminary injunction, it is the Order of this Court that all promotions to the ranks of Detective and Deputy Inspector are enjoined except insofar as they comply with the conditions set forth in the Memorandum Opinion on this motion filed this date.

IT IS SO ORDERED.

/s/ _____
JAMES P. CHURCHILL
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 74-72798

HENRY REED, ET AL., PLAINTIFFS,

v.

WILLIAM LUCAS, ET AL., DEFENDANTS.

MEMORANDUM OPINION

This is a class action civil rights suit by applicants to and members of the Wayne County Sheriff's Department alleging violations of Sections 1981, 1983, and 1985(3) of Title 42, U.S.C., by the Sheriff, members of the Wayne County Civil Service Commission, the Wayne County Board of Commissioners, Local 502-M, NUPO, and Local 1917, AFSCME, and their presidents. Discrimination against black applicants is alleged in the areas of hiring and promotion through the use of non-validated tests and other non-job-related criteria.

Plaintiffs have requested preliminary and permanent injunctive relief enjoining the use of non-validated tests for hiring and promotions, enjoining the use of provisional appointments to fill current vacancies, and enjoining the enforcement of collective bargaining contracts and Civil Service Rules which have the effect of discriminating against members of the plaintiff class. They have further requested a declaratory judgment that the defendants' practices violate Sections 1981, 1983, and 1985(3) of Title 42, U.S.C., as well as the Fourteenth Amendment of the Constitution. Finally, they request back pay to compensate for lost earnings due to the discriminatory practices complained of.

The plaintiffs have moved at this juncture for preliminary injunctive relief enjoining the Sheriff from making permanent or provisional appointments to the rank of De-

tective, Sergeant, Lieutenant, or Deputy Inspector, pending the hearing on the merits of this action.

They allege that the low turnover rate in the Sheriff's Department means that unless present vacancies are preserved, any injunctive remedy at the conclusion of the suit can have only minimal effect. Further, they allege that even if present appointments were made on a temporary basis if a new promotional system is instituted at the conclusion of this litigation, the incumbents in such temporary positions would have a substantial advantage over other applicants due to the experience gained in the position. Thus, they allege that opportunities for those presently unfairly excluded would be minimal.

On a motion for preliminary injunctive relief, courts balance several factors in determining whether or not to exercise the discretionary grant of relief. Primary among those factors are the likelihood of success on the merits, the extent of injury to the defendant if the injunction is granted, the public interest in the granting or denial of relief, and the significance of the threat of irreparable harm to plaintiffs if the injunction is not granted.

On the issue of likelihood of success on the merits, the plaintiffs have presented a statistical record drawn from reports made by the Sheriff's Department to the Wayne County Office of Human Relations between the years 1969 and 1974. These reports, as elucidated on the witness stand by Ms. Mary Leonard, the Administrative Assistant in charge of personnel for the Sheriff's Department, show the following breakdown by race for the ranks for which preliminary injunctive relief is sought.

Detectives		White	Black	% Black
	1969	18	1	5.2%
	1971	30	1	3.2%
Feb.	1972	21	1	4.5%
Dec.	1972	20	2	9.1%
	1974	26	3	10.3%

* Sergeants and Lieutenants			
1969	27	1	3.5%
1971		11	
Feb. 1972		9	
Dec. 1972		10	
1974	46	12	20.7%
Deputy Inspectors	White	Black	% Black
1969	3	0	0%
1971			0%
Feb. 1972			0%
Dec. 1972			0%
1974	7	0	0%

Statistics showing disparity in hiring or promotion of blacks as compared to whites make out a prima facie case of discrimination sufficient to shift the burden to the defendants to show that the criteria used in making hiring and promotional decisions are job-related. *Albermarle Paper Co.* v. *Moody*, ___ U.S. ___, Slip Opinion No. 74–389, decided June 25, 1975; *Pettway* v. *American Cast Iron*, 494 F.2d 211 (CA5 1975); *Rowe* v. *General Motors Corporation*, 457 F.2d 348 (CA5 1972); *Brooks* v. *Beto*, 366 F.2d 1 (CA5 1966), cert. den., 386 U.S. 975, 87 S.Ct. 1169, 18 L.Ed.2d 135 (1967). The statistics here presented show a great disparity in the percentage of black detectives and deputy inspectors as compared to the percentage of blacks in the present population of Wayne County, stipulated to be twenty-seven per cent (27%). It was suggested during argument that the relevant population for comparison of percentages of blacks should be Wayne County exclusive of the city of Detroit, since two divisions of the Sheriff's Department, the road patrol and the airport division, operate almost exclusively outside the city of Detroit. The Court rejects this suggestion as manifestly improper and accepts as the relevant basis the entire county which provides the population from which applications for employment are

* Available statistics provide no separate statistics for sergeants and lieutenants.

drawn. *Albermarle Paper Co.* v. *Moody*, supra, at 25. The Court does recognize that the current racial ratio within the county may not provide the most accurate standard for comparison with the Sheriff's Department; but since no other figure has been offered, the current statistics will be used for the purposes of this preliminary motion. The optimal figure might reflect the percentage of each race in the population at the time of hiring.

The plaintiff has presented further evidence of past discrimination in the area of assignment to the Road Patrol Division of the Department. There was evidence that experience in that division was advantageous to candidates sitting [for] the written and oral detectives examinations and that assignments to that division went overwhelmingly to white officers. Further evidence showed that the formerly discretionary assignment practices have been replaced by a strict seniority system of assignments to the various divisions. The Court finds that however invidious the past practice may have been, as time goes by the effects of that practice have diminished and will continue to diminish, if indeed they still exist.

A further instance of possible discrimination appeared in the system of provisional appointments to vacancies for which there was no current eligibility list. The evidence suggested that provisional appointments had been given to white officers, providing them with experience which, again, gave them a substantial advantage on the examination for promotion to the position as a permanent rank. This practice, too, has been discontinued, as the union contracts and the Civil Service Rules now require that there always be a current eligibility list from which promotions must be made in order of priority on the list. The effects of that system will likewise continue to diminish over time.

The defendants presented little evidence that the examinations and qualifications used for the challenged promotions were job-related, aside from pointing out the union contract provisions which require job-relatedness. The Court therefore finds as a preliminary determination that plaintiffs have shown a reasonable likelihood of success in showing at trial a racially discriminatory impact on promotions within the Wayne County Sheriff's Department.

The Court must counterbalance the public interest in the continued efficient operation of the Sheriff's Department. Any injunction which caused continuing vacancies in the authorized table of organization of the Department would jeopardize that efficient operation. The evidence shows that even if promotions were enjoined, the functions attributable to those positions would in fact be subsumed by other officers, who would gain experience and thus an advantage on the promotional examination for those positions. The potential for discriminatory abuse in such an ad hoc system would be at least as great as that under the provisional appointment system sought to be enjoined by plaintiffs.

Nonetheless, the evidence shows that there exists a substantial risk of further discrimination if the present tests for promotion to the ranks of detective and deputy inspector continue in use. The testimony indicated an extremely low turnover rate within the Department, which could cause irreparable harm to the plaintiffs if the potentially discriminatory promotions are allowed to continue.

Any effective preliminary relief must satisfy both the overwhelming public interest in maintaining the efficiency of the Sheriff's Department and the plaintiffs' apparently well-founded objection to the present promotional system. A solution similar to that adopted by the First Circuit in *Castro* v. *Beecher*, 459 F.2d 725 (1972), seems best to harmonize those opposing interests. That solution called for the adoption of new tests and the hiring of minorities in a set ratio to be specified by the trial court. No new tests can possibly be validated and implemented here in time for use as part of a preliminary order.

The present promotional tests and qualifications in all probability contain some elements which cause them to operate differentially on black and white applicants. It is impossible at this stage in the proofs for the Court to determine exactly what aspect of the promotional system causes this impact. There has been evidence from the defendants of attempts, albeit non-professional, to insure that the questions on the detectives examination are both job-related and culturally unbiased. No alternative interim sys-

tem for promotions has been suggested by either side. The Court will therefore order the present Civil Service Commission rules regarding promotions, as modified by the current union contracts, to continue in operation pending a determination on the merits of this suit, subject to the conditions set forth below.

Promotions to the ranks of detective and deputy inspector may proceed only on the following basis: One out of every two persons promoted to detective and to deputy inspector must be a member of the black race. Within that framework, the only modification of the present rules for use of the eligibility lists will be the provision that a black person on the current eligibility list may be appointed to detective or to deputy inspector even though there may be a white person higher up the appropriate list at the time of the promotion. Should the percentage of blacks in either rank reach the percentage of blacks in the population of Wayne County before resolution of this suit on the merits, then the ratio shall be reduced to one black for every three whites promoted to either rank.

To the extent and under the conditions outlined herein, the plaintiffs' Motion for Preliminary Injunction will be granted.

/s/ _____
JAMES P. CHURCHILL
United States District Judge

Dated: July 16, 1975

Officer Robert Booth
24290 Norfolk
Detroit, Michigan 48219
August 14, 1975

Herbert C. Rice, Director
Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Rice:

Some months ago, Bobby Hawkins, a member of the Guardians of Michigan, Inc., submitted an LEAA charge to your office complaining of discrimination in the Wayne County Sheriff's Department. Since there apparently has been no investigation of Hawkins' charge, and since a federal court recently held that discrimination exists within the Wayne County Sheriff's Department, I hereby submit this charge on behalf of myself, of the Guardians of Michigan, and of its members.

As you're undoubtedly aware, there are very few promotional ranks in the Wayne County Sheriff's Department which have been filled by black deputy sheriffs. Of 29 detectives, there are only 3 (or 10.3%) black detectives; of 40 sergeants, there are only 7 (or 17.5%) black sergeants; there are only 5 black lieutenants; and of 7 deputy inspectors, there are no black deputy inspectors.

In order to be eligible for promotion, the Wayne County Sheriff's Department requires exorbitant time-in-grade experience as a deputy sheriff, and requires successful passage of discriminatory written tests. No promotion requirement has been validated or related to job performance.

As I believe you're aware, we brought two lawsuits last year against the Department challenging its racially discriminatory promotion practices: *Hawkins* v. *Lucas*, 74–032928 (Cir. Ct. of Wayne Cty., Mich., filed Oct. 4, 1974) which asserts violations of state law; and *Reed* v. *Lucas*, 74–72798 (E.D. Mich., filed Nov. 18, 1974) which asserts violations of federal law.

Approximately one month ago, on July 16, 1975, the Court in *Reed* entered a Memorandum Opinion and Order in which the Court found it likely that the plaintiffs would prevail on the merits and thus preliminarily enjoined the Department from promoting any deputy sheriffs to the ranks of detective and deputy inspector other than on a one-to-one, black-white basis. Encompassed in its Memorandum Opinion and Order is the Court's determination that the Wyne County Sheriff's Department has violated federal employment discrimination laws. A full trial on the merits, however, will not be held until sometime this winter, at the earliest.

Currently the Wayne County Sheriff's Department is receiving more than $800,000 in LEAA funding. Since the Department, pursuant to judicial determination, has violated federal law in the past and apparently is currently in violation of federal law since there is no indication that its discriminatory practices have ceased, I urge that you immediately suspend all LEAA funding to the Wayne County Sheriff's Department and immediately initiate proceedings to recover all unlawfully spent LEAA monies.

Enclosed for your convenience is a copy of the court's recent decision in *Reed*.

Sincerely,

ROBERT BOOTH

enc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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75 Civ. 1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

State of Hawaii)
) ss.
County of Honolulu)

JENNIE McALLISTER, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-entitled case.

2. I am a female citizen of the United States; am of Chinese descent; and am a resident of Honolulu, Hawaii.

3. I have been discriminated against by the Honolulu Police Department.

4. The Honolulu Police Department employs approximately 1461 sworn police officers, of whom only 10 (or approximately .7%) are women.

5. During the past year, all applicants for employment as a police officer with the Honolulu Police Department were required to meet a minimum height requirement of 5'7". Prior to the fall of 1974, the minimum height requirement had been 5'8". Both requirements have a sexually discriminatory impact upon female applicants. Neither requirement had ever been professionally validated to determine its va-

lidity, predictive or otherwise, as a measure of job performance for the job of police officer, nor has either requirement been shown to be of operational necessity to the performance of that job.

6. I am studying toward my AA degree in police science and working toward a brown belt in Karate. I stand 5'4" in height.

7. In June, 1974, I filed an application for employment as a police officer with the Honolulu Police Department. Shortly thereafter, my application was summarily rejected solely because I did not meet the then 5'8" height requirement.

8. In July, 1974, I filed a charge of sex discrimination with the EEOC, and in May, 1975, the United States Department of Justice issued a right-to-sue letter to me. In July 1975, I filed a complaint in the United States District Court charging Honolulu officials with sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and in violation of LEAA's Equal Rights Guidelines, 38 Fed. Reg. 6415 (1973) reissued (1974), see *McAllister* v. *Honolulu*, Civ. No. 75–248 (D.Haw., filed July 17, 1975).

9. Honolulu's minimum height requirement has been subjected to close review by LEAA. In 1972, Lucile Abreu, a police officer with the Honolulu Police Department, filed a charge of discrimination with LEAA. Officer Abreu had been denied promotion to detective because she did not meet the 5'8" height requirement then applicable to male police officers. In 1973, after an investigation, LEAA determined that the minimum height requirement was discriminatory and not job related, and that the Police Department was not in civil rights compliance. Thereafter, LEAA unsuccessfully sought to obtain civil rights compliance from Honolulu officials and, I believe, from the chief executive of the State of Hawaii.

10. On September 29, 1975, approximately three weeks after I filed the above-styled lawsuit against LEAA and various of its officials, the Mayor of Honolulu publicly announced that the minimum height requirement of the Honolulu Police Department would be eliminated. Although

it thus appears that the discriminatory and unlawful minimum height requirement will be eliminated, it remains uncertain as to whether I will be given employment, back pay, and retroactive seniority from the date I was unlawfully denied employment.

11. I believe that the Honolulu Police Department has received more than $300,000 in LEAA funding, and is currently a recipient or subgrantee of approximately $150,000 in LEAA funding. LEAA has never terminated funding to the Honolulu Police Department.

/s/ _____
JENNIE MCALLISTER

Sworn to before me this
12th day of November, 1975.

/s/ _____
Notary Public

Evan R. Shirley (1220–0)
Kendall Building
888 Mililani Street
Honolulu, HI 96813
Telephone No. 524-1396
Attorney for plaintiff

Of Counsel:
American Civil Liberties Union
of Hawaii Foundation
217 South King Street
Honolulu, Hawaii 96813
Telephone No. 538-7336

McALLISTER EXHIBITS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Civil No. 75-248

JENNIE A. McALLISTER, Individually and on behalf of others similarly situated, PLAINTIFFS,

vs.

CITY AND COUNTY OF HONOLULU; FRANCIS KEALA, Individually, and in his capacity as Chief of Police; HENRY BORANIAN, Individually, and in his capacity as Director of Civil Service; THOMAS K. SING, Individually, and in his capacity as Chairman, Civil Service Commission, HIROO MIYAGI, JOSEPH HUNTER, RAY TANAKA, DANIEL PACRECO, Individually, and in their capacity as Members of Civil Service Commission; DEFENDANTS.

COMPLAINT: EXHIBITS "A" THROUGH "D"; SUMMONS

COMPLAINT

PRELIMINARY STATEMENT AND JURISDICTION

1. Plaintiff JENNIE A McALLISTER challenges the minimum height requirement of five feet seven inches (5'7") established for employment as a Police Services Officer with the City and County of Honolulu.

2. Plaintiff alleges that this arbitrary standard serves to separate the men from the women and especially to separate the men from the women of Oriental descent from equal employment opportunities guaranteed by Title VII of the Civil Rights Act of 1964.

3. Plaintiff asserts that this arbitrary minimum height requirement operates as a deprivation of both constitutional and statutory rights by the disparate impact on women and especially on women of Oriental descent who apply for the position of a Police Services Officer with the City and County of Honolulu.

4. Jurisdiction is founded on the Constitution and Laws of the United States and on 28 U.S.C. Section 1343 (3) and (4).

5. Plaintiff has met the jurisdictional requirements established by 42 U.S.C. Section 2000e–5 in that she filed a complaint with the Equal Employment Opportunity Commission on July 18, 1974, within 180 days of the alleged discriminatory act. On May 20, 1975 she received from the United States Department of Justice, pursuant to 42 U.S.C. 2000e–5(f), notice of her right to institute a civil action.

6. Plaintiff seeks, for herself and for the assorted classes she represents, injunctive relief authorized by 42 U.S.C. Section 2000e–5(g).

7. Plaintiff seeks, for herself and for the asserted classes she represents, a declaratory judgment pursuant to 28 U.S.C. Sections 2201–2202 that the five foot, seven inch (5′7″) minimum height requirement for employment as a Police Services Officer for the City and County of Honolulu violates the Constitution and Laws of the United States in that this employment requirement invidiously discriminates against women and especially against women of Oriental descent.

8. Plaintiff requests, for herself and for the asserted classes she represents, that defendants be enjoined from maintaining unlawful practices which have the purpose and/or effect of discrimination against applicants for the position of Police Services Officer on the basis of sex and/or sex and race. Such practices include, but are not limited to, discrimination by reason of sex and/or sex and race in the recruiting, testing, and hiring of women and especially women of Oriental descent for the position of Police Services Officer for the City and County of Honolulu.

9. Plaintiff seeks, for herself, damages authorized by 42 U.S.C. Section 2000e–5(g).

PARTIES

10. Plaintiff JENNIE A. McALLISTER is a resident of the City and County of Honolulu and a citizen of the United States. She is a 29 year old woman of Chinese descent and is five feet, four inches (5'4") in height, weighing 135 pounds.

11. Plaintiff brings this action on her own behalf and, pursuant to Rule 23(a) and (b)(2) of the *Federal Rules of Civil Procedure*, on behalf of:

A. All women who have similarly attempted or hereafter may attempt to obtain employment as a Police Services Officer with the defendant CITY AND COUNTY OF HONOLULU, and who have been or hereafter may be denied the right to apply for said position because of their inability to meet the minimum height requirement;

B. All women of Oriental descent who have similarly attempted or hereafter may attempt to obtain employment as a Police Services Officer with the defendant CITY AND COUNTY OF HONOLULU, and who have been or hereafter may be denied the right to apply for said position because of their inability to meet the minimum height requirement.

12. The classes which Plaintiff represents and which plaintiff asserts are so numerous that the joinder of all members is impractical. There are questions of law or fact common to the asserted classes. The claims of the Plaintiff are typical of the claims of the asserted classes. The Plaintiff will fairly and adequately protect the interest of the asserted classes. Defendants, who are the parties that may oppose the asserted classes, have acted or refused to act on grounds generally applicable to the entire asserted classes, thereby making final injunctive relief or corresponding declaratory relief with respect to the asserted classes as a whole appropriate.

13. Defendant CITY AND COUNTY OF HONOLULU is a municipal corporation operating pursuant to the laws of the State of Hawaii.

14. Defendant FRANCIS KEALA is the Chief of Police of the City and County of Honolulu and is named in his individual and official capacities.

15. Defendant HARRY BORANIAN is the Director of Civil Service of the City and County of Honolulu and is named in his individual and official capacities.

16. Defendant THOMAS K. SING is the Chairman of the Civil Service Commission of the City and County of Honolulu and is named in both individual and official capacities.

17. Defendants HIROO MIYAGI, JOSEPH HUNTER, RAY TANAKA, DANIEL PACHECO are members of the Civil Service Commission of the City and County of Honolulu and are named in their individual and official capacities.

STATEMENT OF THE CLAIM

18. Plaintiff JENNIE A. McALLISTER meets, or can meet if allowed to, all requirements to be appointed to the position of Police Service Officer II for the City and County of Honolulu save and except the minimum height requirement.

19. On or about June 12, 1974 Plaintiff filed an application for the position of Police Services Officer II with the Civil Service Department of the city and County of Honolulu.

20. On or about June 27, 1974, Defendant CITY AND COUNTY OF HONOLULU summarily rejected Plaintiff's application solely because her height [five feet, four inches (5'4")] was not at least five feet, eight inches (5'8").

21. Thereafter, the height limitation was lowered by the City and County of Honolulu to five feet, seven inches (5'7") and has, to date, remained five feet, seven inches (5'7").

22. On or about July 17, 1974, Plaintiff filed a formal appeal contesting the rejection of her employment application

with the Civil Service Commission of the City and County of Honolulu.

23. On or about July 18, 1974, Plaintiff filed a formal Charge of Discrimination with the United States Equal Employment Opportunity Commission [The Charge of Discrimination filed by Jennie McAllister on July 18, 1974 is attached hereto as Exhibit "A" and made a part hereof].

24. On or about September 23, 1974, a hearing was held before said Civil Service Commission, and, on or about April 28, 1975, said Civil Service Commission denied Plaintiff's appeal [The letter to Jennie A. McAllister from Thomas K. Sing, Chairman, Civil Service Commission, City and County of Honolulu dated May 6, 1975 is attached hereto as Exhibit "B" and made a part hereof].

25. On or about May 20, 1975, the United States Department of Justice issued a "Right to Sue Letter" [The letter to Jennie McAllister from J. Stanley Pottinger, United States Department of Justice, dated May 20, 1975 is attached hereto as Exhibit "C" and made a part hereof].

26. Defendant CITY AND COUNTY OF HONOLULU has arbitrarily through its minimum height requirement denied Plaintiff, and the asserted classes she represents, the opportunity to qualify as police officer for the City and County of Honolulu.

27. The population of the City and County of Honolulu is approximately forty-eight per cent (48%) women and seventeen per cent (17%) women of Oriental descent. Exclusion of women and especially women of Oriental descent from employment as police officers with the City and County of Honolulu—and this is a direct effect of the height requirement—has denied Plaintiff, and the asserted classes she represents, the rights and protections guaranteed by the Fifth, Thirteenth and Fourteenth Amendments to the United States Constitution as well as the laws of the United States.

28. The minimum height requirement was not, is not, and has not been professionally developed in relation to modern police science techniques.

29. The minimum height requirement was not, is not, and has not been established as a result of critical, valid, and verifiable job analysis for the position of Police Services Officer.

30. The minimum height requirements was not, is not, and has not been validated to establish predictive evidence that the height requirement accurately measures job performance of women and especially of women of Oriental descent.

31. The minimum height requirement of five feet, seven inches (5'7") directly results in significant disparate impact upon women and especially upon women of Oriental descent applying for position of Police Services Officer with the City and County of Honolulu.

32. Defendant CITY AND COUNTY OF HONOLULU presently receives funds from the United States Law Enforcement Assistance Administration which are used to upgrade the quality of police services. The minimum height requirement in question violates the Equal Rights Guidelines of the Law Enforcement Assistance Administration, 38 Fed. Reg., No. 46, p. 6415 (March 9, 1973) [The Equal Rights Guidelines of the Law Enforcement Assistance Administration are attached hereto as Exhibit "D" and made a part hereof].

33. Plaintiff and the asserted classes she represents, desiring to serve the community in which they live, have suffered and are continuing to suffer irreparable harm due to the individuals discrimination in employment by Defendants against women and especially against women of Oriental descent.

34. Plaintiff and the asserted classes she represents have no plain, adequate or complete remedy at law to redress the wrongs alleged. Plaintiff and the asserted classes she represents are now suffering and will continue to suffer irreparable injury from Defendant's policy, practice, custom, usage and conduct as set forth herein.

PRAYER

WHEREFORE, Plaintiff's prays that this Honorable Court:

a) Assume jurisdiction of this cause.

b) Determine by Order pursuant to the Federal rules of Civil Procedure, Rule 23(c)(1), that the action by Plaintiff and the classes she represents and asserts may be maintained as a class action.

c) Grant Plaintiff, JENNIE A. McALLISTER an Order restraining Defendants from arbitrarily declaring Plaintiff ineligible to apply for the position of Police Services Officer II on the basis of any unvalidated and irrelevant employment qualification tests which have a disparate effect upon women solely because of their sex and upon women of Oriental descent because of their sex and race.

d) Grant Plaintiff and the asserted classes she represents an Order restraining defendants from arbitrarily declaring Plaintiff and the asserted classes she represents ineligible to apply for positions of Police Services Officers on the basis of any unvalidated and irrelevant employment qualification tests which have a disparate effect upon women solely because of their sex and upon women of Oriental descent because of their sex and race.

e) Grant Plaintiff JENNIE A. McALLISTER a declaratory judgment that the practice and policy of defendants of requiring Plaintiff as an applicant for the position of Police Services Officer II to meet the minimum height standard of five feet, seven inches (5'7") is illegal, unlawful, and unconstitutional.

f) Grant Plaintiff and the asserted classes she represents a declaratory judgment that the practice and policy of defendants of requiring all applicants for the position of Police Services Officer to meet the minimum height standard of five feet, seven inches (5'7") is illegal, unlawful, and unconstitutional.

g) Order Defendants to permit Plaintiff JENNIE A. McALLISTER to take the examination for Police Services Officer II, and when qualified, Order Plaintiff hired.

h) Order Defendants to permit Plaintiff and the asserted classes she represents to take the examinations for Police Services Officers and when qualified, Order them hired.

i) If hired, award Plaintiff JENNIE A. McALLISTER back wages, job security and other benefits as if she would have been hired pursuant to her application of June 12, 1974 to the Civil Service Department of the City and County of Honolulu.

j) Award to Plaintiff her costs of suit.

k) Award to Plaintiff her attorney's fees, pursuant to 42 U.S.C. Section 2000e-5(k).

l) Following a hearing of the action according to law, issue on behalf of Plaintiff JENNIE A. McALLISTER an Order retaining jurisdiction of her claim until such time as this Court is assured that from the activity of Defendants and their agents that the violations of rights complained of herein have ceased, are no longer threatened, and the continuing effect of past violations has been permanently and completely removed.

m) Following a hearing of the action according to law, issue on behalf of Plaintiff, and the asserted classes she represents an Order retaining jurisdiction of their claim until such time as the Court is assured that from the activity of Defendants and their agents that violations of rights complained of herein have ceased and are no longer threatened and the continuing effect of past violations has been permanently and completely removed.

n) Grant Plaintiff JENNIE A. McALLISTER such other relief as is necessary and appropriate in this case.

o) Grant Plaintiff and the asserted classes she represents such other relief as is necessary and appropriate in this case.

DATED: Honolulu, Hawaii this 17th day of July, 1975.

/s/ _____

EVAN R. SHIRLEY
Attorney for Plaintiff

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION	EEOC CHARGE NO.	FORM APPROVED OMB NO.

INSTRUCTIONS
If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION
- [X] RACE OR COLOR
- [X] SEX
- [ ] RELIGIOUS CREED
- [ ] NATIONAL ORIGIN

NAME (Indicate Mr. or Mrs.)		DATE OF BIRTH
Ms. Jennie A. McAllister		January 25, 1946
STREET ADDRESS: 739 A-1 Judd Street	COUNTY: Honolulu	SOCIAL SECURITY NO.: 576-46-3855
CITY, STATE, AND ZIP CODE: Honolulu, Hawaii 96817		TELEPHONE NO. (Include area code): (808) 524-2624

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr. or Mrs.)	TELEPHONE NO. (Include area code)
Ms. Betty L. Anderson	(808) 521-7310
STREET ADDRESS: 1650 Liholiho Street, Apt. 508	CITY, STATE, AND ZIP CODE: Honolulu, Hawaii 96822

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME	TELEPHONE NO. (Include area code)
City & County of Honolulu, Department of Civil Service	(808) 546-2814
STREET ADDRESS: City Hall Annex	CITY, STATE, AND ZIP CODE: Honolulu, Hawaii 96813

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY	DATE FILED	AGENCY CHARGE FILED WITH (Name and address)
[X] YES [ ] NO	June 10, 1974	State of Hawaii, Department of Labor and Industrial Relations, 825 Mililani Street (C. Mitsuyama)

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year)
Honolulu Police Dept. 1,758	June 27, 1974

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

The City and County of Honolulu, Department of Civil Service as the personnel arm of the Honolulu Police Department has rejected my application to the police force solely on the basis that my height does not meet the 5'8" minimum requirement. This height requirement discriminates firstly against the female sex, only approximately 5% of which are 5'8" or taller, and secondly against the Oriental race, whose average height is well under the stated requirment. In the past, women and non-caucasian persons have been restricted in their job opportunities to positions that were without height requirements. Actual rejections were few because such positions were avoided. However, the discrimination existed and remains presently. In a community in which approximately 60-70% of the citizens are of non-caucasian origin, the height requirement precludes persons from obtaining positions with the Police Department who qualify in every other respect, including background in, knowledge of, and ability to relate to the community.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE	CHARGING PARTY (Signature)
JUL 15 1974	[signature]

Subscribed and sworn to before me this EEOC representative.

DATE	EEOC REPRESENTATIVE AND TITLE

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year): July 15, 1974

[signature]

Commission expires 6-30-78

SIGNATURE OF NOTARY (If it is necessary for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)

EEOC Form 5 (Rev. 1-71) Previous editions of this form may be used.

GPO 883-811

487

DEPARTMENT OF CIVIL SERVICE
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813

May 6, 1975

Ms. Jennie A. McAllister
739 A-1 Judd Street
Honolulu, Hawaii 96817

Dear Ms. McAllister:

This is to inform you that the Civil Service Commission at its meeting of April 28, 1975 denied your appeal against the minimum qualification requirements for the position of Police Services Officer II.

Formal findings of fact and conclusions of law will be transmitted to you upon approval by the Commission.

Sincerely,
CIVIL SERVICE COMMISSION
THOMAS K. SING
Chairman

cc: American Civil Liberties
Union of Hawaii

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

May 20, 1975

AIR MAIL

Ms. Jennie A. McAllister
% Evan R. Shirley, Esquire
Attorney at Law
The Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

Re: EEOC Charge Against City & County of Honolulu, Department of Civil Service No. TSF5-C155

Dear Ms. McAllister:

Because you have filed a charge against the respondent named above and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

Your attorney may inspect the investigative file pertaining to the case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 1390 Market Street, Suite 325, San Francisco, California 94102.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By:

HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Mr. Monte B. Posey
District Director
San Francisco District Office
Equal Employment Opportunity
Commission
1390 Market Street, Suite 325
San Francisco, California 94102

Jennie McAllister
739 A-1 Judd Street
Honolulu, Hawaii

August 26, 1975

Office of Civil Rights Compliance
Law Enforcement Assistance Administration
United States Department of Justice
Washington, D.C. 20530

Dear Gentlepeople:

In late 1972, or in early 1973, a charge of discrimination was filed with your office alleging that the minimum height requirement of the Honolulu Police Department was sex discriminatory. In the summer of 1972, I believe, you made a determination that the minimum height requirement was unlawful and that Honolulu was thus *not* in civil rights compliance; thereafter, and until now, I believe you have unsuccessfully sought to obtain civil rights compliance.

In the meantime, Honolulu's minimum height requirement has continued to be used to reject qualified applicants from obtaining employment as police officers. I am one such applicant.

I am a woman, and am of Chinese descent. I was denied employment by the Honolulu Police Department in June, 1974, and continue to be denied such employment, solely on the grounds that I cannot meet the minimum height requirement.

On the basis of your previous investigation, your determination of noncompliance, and your unsuccessful effort in achieving voluntary compliance, I hereby urge you to immediately suspend all LEAA funding to Honolulu.

Sincerely,

/s/ _____

JENNIE MCALLISTER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. No. 75–1444
Judge Corcoran

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL., PLAINTIFFS,

v.

RICHARD W. VELDE, ET AL., DEFENDANTS.

AFFIDAVIT

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

E. RICHARD LARSON, being first duly sworn, deposes and says:

1. I am one of the attorneys for the plaintiffs in the above-styled action. I submit this affidavit pursuant to Rule 56(e) of the Federal Rules of Civil Procedure in opposition to defendants' Motion for Summary judgment.

2. With several exceptions, nowhere in defendants' motion papers do they set forth facts or even allegations about the dollar amount of their LEAA funding to recipient law enforcement agencies, or even about their providing LEAA funding to recipient law enforcement agencies.

3. On August 7, 1975, I served a Freedom of Information Act request upon defendant Richard Velde requesting, *inter alia*, an "enumeration" of all LEAA discretionary funding and LEAA block grant funding from FY 1972 through FY 1976 which had been provided to approximately fifty specified law enforcement agencies. Enclosed with a letter from LEAA dated August 21, 1975 was a computer printout in response to my FOIA request.

4. Filed with plaintiffs' Opposition papers (but not attached hereto because of bulk) are copies of my FOIA request; of LEAA's response letter; and those portions of LEAA's computer print-out which relate to defendants' LEAA funding of various of the law enforcement agencies mentioned in defendants' unsworn and uncertified Statement of Reasons and Appendix, i.e., Ames Police Department, Cleveland Police Department, Des Moines Police Department, Detroit Police Department, Honolulu Police Department, Indiana State Police Department, New Orleans Police Department, New York City Police Department, Newton Police Department, Oakland Police Department, Philadelphia Police Department, Portland Police Bureau, Richmond Police Department, St. Louis Police Department, Wayne County Sheriff's Department. Copies of those portions of the computer print-out pertaining to the Philadelphia Police Department and to the Richmond Police Department are already on file with this Court, see Plaintiff's Motion for a Preliminary Injunction and a Writ of Mandamus, pp 53–68, 117–125 (served January 14, 1976).

/s/_____
E. RICHARD LARSON

Sworn to before me this
22nd day of March, 1976

/s/_____
BELLA GREENE
Notary Public

In the Supreme Court of the United States

No. 80-1074

RICHARD W. VELDE, ET AL., PETITIONERS,

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ORDER ALLOWING CERTIORARI

Filed May 4, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

Justice Powell and Justice Stevens took no part in the consideration or decision of this petition.

Office-Supreme Court, U.S.
FILED
MAR 4 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1074

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, et al.,

Petitioners,

—v.—

NATIONAL BLACK POLICE ASSOCIATION, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF IN OPPOSITION TO CERTIORARI

E. RICHARD LARSON*
ISABELLE KATZ PINZLER
BRUCE J. ENNIS
American Civil Liberties Union Foundation
132 West 43rd Street
New York, New York 10036
212/944-9800

WILLIAM L. ROBINSON
NORMAN J. CHACHKIN
Lawyers' Committee for Civil Rights Under Law
733 15th Street, N.W.
Washington, D.C. 20005
202/628-6700

Counsel for Respondents

**Counsel of Record*

QUESTION PRESENTED*

1. Whether federal officials are absolutely immune from personal damages liability for alleged constitutional and statutory violations arising from their intentional refusal to carry out their civil rights enforcement obligations.

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* In their Petition for a Writ of Certiorari at p.i, petitioners request this Court to consider three questions. The first question presented by petitioners is premised on a mischaracterization of respondents' claims in this case; that question is thus restated by respondents in the text above. The second and third questions presented by petitioners, neither of which was addressed by the courts below, should not be considered by this Court for the reasons set forth at pp. 7-8 n.9, infra.

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STATEMENT

Respondents -- the National Black Police Association and twelve named individuals -- brought suit in 1975, alleging a consistent and willful refusal by petitioners to carry out their statutory and constitutional obligations to deny or withdraw federal financial assistance to grantees practicing discrimination. C.A.App. at 8-37 (Complaint, ¶¶23-112).[1] At the time this action was commenced, petitioners were federal officials[2] who managed

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1. Citations in the form "C.A.App." are to the Appendix filed with the U.S. Court of Appeals for the District of Columbia; citations to the decision below are to National Black Police Association v. Velde, 431 F.2d 784 (D.C.Cir. 1980).

2. The petitioners, and the jobs they held at the time that this action was commenced, are Richard W. Velde, Administrator of LEAA; Charles R. Work, Deputy Administrator of LEAA; Herbert C. Rice, Director of LEAA's Office of Civil Rights Compliance; and Edward H. Levi, Attorney General of the United States. Each was alleged to be "responsible for insuring that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and for enforcing LEAA's constitutional and statutory civil rights obligations." C.A.App. at 8-9 (Complaint, ¶¶14-17).

the Law Enforcement Assistance Administration, an agency which distributed several billion dollars' worth of federal grants.

In essence, petitioners were charged with failing to alter conditions which Congress had already found to exist: namely, that "LEAA has had no civil rights enforcement program." 119 CONG. REC. 20071 (1973).[3,4]

---

3. Petitioners were charged, for example, with providing unabated LEAA funding to more than 50 law enforcement agencies judicially found to have engaged in unlawful employment discrimination, C.A.App. at 11 (Complaint, ¶23); with refusing to conduct pre-award compliance reviews of law enforcement agencies applying for LEAA funding, C.A.App. at 13 (Complaint, ¶29); with refusing to review the written Equal Employment Opportunity Programs of LEAA recipients, C.A.App. at 13 (Complaint, ¶30); with refusing to review the use of unlawful minimum height requirements maintained by LEAA recipients, C.A.App. at 13 (Complaint, ¶31); with refusing to act on administrative complaints of discrimination, C.A.App. at 14 (Complaint, ¶33); and with never having even initiated an administrative fund termination proceeding against a law enforcement agency that had been found to be in noncompliance with federal nondiscrimination requirements, C.A.App. at 14 (Complaint, ¶35).

4. This finding motivated the Congress to enact §518(c) of the Crime Control Act of 1973 which imposed mandatory civil rights enforcement obligations upon LEAA officials. See 42 U.S.C. §3766(c) (Supp. V 1970).
[footnote continued on next page]

Alleging that petitioners' uniform, knowing funding of discriminatory law enforcement agencies violated the Fifth Amendment,[5] §518(c) of the Crime Control Act,[6] and other federal statutes,[7] respondents sought compensatory

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[footnote continued from previous page]

LEAA's lack of civil rights enforcement, however, continued. As Congress concluded three years later: "The response of LEAA to the 1973 civil rights amendments has been less than minimal." H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. 11 (1976). See also the findings on LEAA's nonenforcement rendered by the United States Commission on Civil Rights, The Federal Civil Rights Enforcement Effort, Vol. VI, To Extend Federal Financial Assistance, Introduction, 271-393, 773-777 (November, 1975), set forth in C.A.App. at 481-623.

5. Respondents' Fifth Amendment claim was based on the established principle that "the Federal Government could not under the Constitution give direct financial aid to [recipients] practicing . . . discrimination." Green v. Connally, 330 F.Supp. 1150, 1164 (D.D.C. 1971) (three-judge court), aff'd sub nom. Coit v. Green, 404 U.S. 997 (1971); see also, Norwood v. Harrison, 413 U.S. 455 (1973); see generally, n.16, infra.

6. Section 518(c) of the Crime Control Act, 42 U.S.C. §3766(c) (Supp. V 1970), as amended in 1973, imposed mandatory administrative enforcement obligations on petitioners once discrimination had been found. See n.4, supra, and n.15, infra.

7. Respondents also alleged that petitioners violated, inter alia, 42 U.S.C. §1985(3).

and punitive damages[8] for injuries suffered by them

> as a result of [petitioners'] willful and malicious refusals, which are unconstitutional and in excess of their authority as set forth above, to insure that LEAA funding is not awarded to governmental law enforcement agencies engaged in racially or sexually discriminatory employment practices, and as a result of [petitioners'] willful and malicious refusals, which are unconstitutional and in excess of their authority, to enforce their federally mandated civil rights enforcement obligations.

C.A.App. at 38-39 (Complaint, ¶E).

Without permitting any discovery, the district court dismissed respondents' damage claims on the grounds that "the challenged actions of the [petitioners] clearly fall within the outer perimeter of the line of their official duties, Barr v. Mateo [sic], 360 U.S. 564 (1959)." C.A.App. at 479 (District Court Order of Dec. 8, 1976). Subsequent to this Court's decision in Butz v. Economou, 438 U.S. 478 (1978), while this matter was pending on respondents' appeal to the U.S. Court of Appeals for the District of

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8. Respondents' request for injunctive relief, dismissed by the district court but reinstated by the court of appeals, is not at issue before this Court.

Columbia, petitioners alleged for the first time that they all were administrative prosecutors and that all of their challenged actions were protected by an absolute prosecutorial immunity. Appellee's C.A. Supplemental Brief at 1-10. A majority of the court of appeals' panel below held that petitioners were entitled only to a qualified good faith immunity. National Black Police Association v. Velde, 431 F.2d 784, 786-787 (D.C.Cir. 1980). The Petition for Rehearing and Suggestion for Rehearing En Banc filed by petitioners was denied by the en banc court of appeals August 1, 1980. See Petition at App. C, p.26a.

SUMMARY OF ARGUMENT

In Butz v. Economou, 438 U.S. 478 (1978), this Court rejected petitioners' contention that federal officials, who were alleged to have violated respondents' constitutional rights, were protected by an absolute immunity. Instead, such officials, except for those few who actually act as administrative prosecutors, are entitled only to a qualified good faith immunity.

The panel opinion below, holding that petitioners here are entitled only to a qualified

good faith immunity, is entirely in accord with this Court's decision in Butz. It also is in accord with the decisions of the courts of appeals which have uniformly held that federal and state officials engaged in administrative or investigative functions who are charged with violating constitutional rights are entitled not to an absolute immunity but to only a qualified good faith immunity. Additionally, the alleged prosecutorial discretion on which petitioners rest their submission does not exist in fact, and in any event is wholly circumscribed by the statutory mandate of §518(c) of the Crime Control Act, 42 U.S.C. §3766(c) (Supp. V 1970).

For the reasons stated herein, the Petition for a Writ of Certiorari should be denied.

REASONS WHY THE WRIT SHOULD BE DENIED

The Ruling Below Involves No Issues Not Resolved in Butz

Here, as in Butz v. Economou, 438 U.S. 478, 485 (1978):

> [The] submission by the United States on behalf of petitioners is that all of the federal officials sued in this case are absolutely immune from any liability for damages even if . . . they infringed respondent[s'] constitutional rights and even if the violation was knowing and deliberate.

Just as this submission[9] was rejected in Butz as "contrary to the course of decision in this Court from the very early days of the Republic," 438 U.S. at 487, it should be rejected here.

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9. In our view, only the first question presented in the petition is worthy of an extended response. The second and third questions, neither of which was addressed by the courts below, merit but a brief response here.

Petitioners describe the second issue in the case, in their Petition at p.i, as whether a cause of action under the Fifth Amendment exists against federal officials who are alleged to have been responsible for the continuation of federal funding to recipients which discriminate on the basis of race or sex. However, in the body of the Petition the government argues principally about the standards of proof which should be required in order to establish a violation of the Fifth Amendment. Petition at pp.17-20. Nothing can be implied from the decision of the court of appeals about the proof which that court would require in order to establish a substantive violation of respondents' constitutional or statutory rights -- except that the allowance of a "defense of good faith or reasonable grounds for their conduct," is in no way inconsistent with petitioners' insistence upon intentional discrimination. Petitioners' argument on this point also misconstrues the allegations of the complaint. The constitutional and statutory violations alleged by respondents occur when the federal government provides financial support to racial and sex-based discrimination. The complaint more than amply alleges that these violations were intentional on the part of the petitioners, who were pointedly notified of their occurrence but who thereafter refused to take action necessary to end the violations. The complaint in fact alleges that petitioners' refusals to act were "willful and malicious." C.A.App.

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In Butz, this Court held that Executive Branch officials, like their state counterparts, are entitled only to a qualified good immunity where they are charged with constitutional violations, subject to the limited

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at 38 (Complaint, ¶E). And, as the Court has said in another context, "[e]ach instance of a failure or refusal to [eliminate a constitutional violation] continues the violation." Columbus Board of Education v. Penick, 443 U.S. 449, 459 (1979).

Petitioners' third question presented is even more far-fetched in the posture of this case. Essentially petitioners argue that this lawsuit should have been dismissed because petitioners ultimately could be found only to have acted in good faith, and that they thereby should be allowed "to invoke a qualified immunity as a matter of law." Petition at p.20. Indeed, petitioners even assert that "[n]othing in respondents' complaint or the record before the district court suggests that petitioners' actions or failure to act were motivated by bad faith." Petition at p.21 n.20. To the contrary, respondents' complaint -- the allegations of which must be taken as true, Conley v. Gibson, 355 U.S. 41, 45-46 (1957) -- charges that petitioners' unconstitutional and illegal behavior was "willful and malicious." C.A.App. at 38 (Complaint, ¶E). Additionally, the record in this case, assembled by respondents despite the trial court's refusal to allow them discovery, provides considerable support for respondents' allegations that petitioners acted willfully and maliciously in violation of respondents' constitutional and statutory rights. See, e.g., nn.13 and 15, infra. See also the findings by Congress and by the U.S. Commission on Civil Rights set out in part in n.4, supra. See generally C.A.App. at 246-477.

exception that an absolute immunity nonetheless is available to those few Executive Branch officials who act as prosecutors.[10] Petitioners here seek to come within that exception by contending that their civil rights enforcement responsibilities placed them in a prosecutorial role by requiring them to decide whether to initiate fund termination proceedings when LEAA recipients were found to have engaged in race or sex discrimination. According to petitioners, even if they followed an administrative policy of never initiating fund termination proceedings, they nonetheless have an absolute immunity from suit.

1. The basic fallacy of petitioners' argument is that, unlike Butz (and despite their characterization of respondents' claims), this action was not brought by a single disgruntled individual or corporation complaining about an individual enforcement decision made by petitioners. Instead, respondents here alleged that they and the larger class they seek to

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10. Of the dozen federal officials sued in Butz, two -- the judicial officer and the prosecuting attorney -- were held entitled to absolute immunity at least so long as they actually had been performing prosecutorial, or advocacy, functions. 438 U.S. at 508-517.

represent were harmed by petitioners' long-standing and consistent refusal to carry out any of their constitutional and statutory civil rights enforcement obligations. C.A.App. at 8-37 (Complaint, ¶¶23-112).[11] As Justice White observed in his opinion for the Court in Butz, where "[e]xtensive Government operations offer opportunities for unconstitutional action on a massive scale . . . an action for damages against the responsible official[s] can be an important means of vindicating constitutional guarantees." 438 U.S. at 506. That is the case here.

2. The Court in Butz allowed absolute immunity for only two of the dozen petitioners -- the judicial officer and the prosecuting attorney -- not just because of their titles but because their discretionary functions were analogous to the "quasi-judicial"

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11. Respondents attack petitioners' nonfeasance in many areas other than their refusal to initiate fund termination proceedings. See n.3, supra.

functions of criminal prosecutors.[12] The petitioners here, in contrast, do not hold positions with prosecutorial titles; and they in fact describe themselves not as prosecutors but as administrators. See Petition at pp.6-7 n.7. Indeed, the record below establishes that petitioners did not exercise discretion

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12. Subsequent to Butz, and in reliance on the distinctions among prosecutorial functions made in Imbler v. Pachtman, 424 U.S. 409 (1976), the courts of appeals have uniformly allowed prosecutors an absolute immunity only for actions taken as advocates before the courts, and not for actions taken in their administrative or investigative roles. Mancini v. Lester, 630 F.2d 990 (3d Cir. 1980) (county prosecutor and deputy attorney general are not entitled to absolute immunity for actions taken in their administrative or investigative roles); Marrero v. Hialeah, 625 F.2d 499 (5th Cir. 1980) (state prosecutors are not protected by absolute immunity for actions taken in their administrative or investigative roles); Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979), cert. denied on relevant issue, 64 L.Ed.2d 214 (1980) (state prosecutors and federal law enforcement officials are not protected by absolute immunity for actions taken in their administrative or investigative roles); Forsyth v. Kleindienst, 599 F.2d 1203 (3d Cir. 1979) (two former U.S. Attorneys General are not protected by absolute immunity for actions taken in their administrative roles); see also, Miller v. DeLaune, 602 F.2d 198 (9th Cir. 1979) (federal Internal Revenue Service official is not protected by absolute immunity); cf. Halperin v. Kissinger, 606 F.2d 1192 (D.C.Cir. 1979), cert. granted, 64 L.Ed.2d 807 (1980) (the President and his advisors are not protected by absolute immunity).

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in individual cases but adopted and followed an administrative policy of never initiating fund termination proceedings.[13] In other words, there were no officials within the LEAA

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Even before this Court's decision in Butz, the courts of appeals had uniformly denied absolute immunity to federal and state officials who had been acting not in their "quasi-judicial," prosecutorial roles but in their administrative or investigative roles. Slavin v. Curry, 574 F.2d 1256 (5th Cir. 1978) (state officials); Briggs v. Goodwin, 569 F.2d 10 (D.C.Cir. 1977), cert. denied, 437 U.S. 904 (1978) (federal officials); Helstoski v. Goldstein, 552 F.2d 564 (3d Cir. 1977) (federal officials); Guerro v. Mulhearn, 498 F.2d 1249 (1st Cir. 1974) (state officials); Hampton v. Chicago, 484 F.2d 602 (7th Cir. 1973), cert. denied, 415 U.S. 917 (1974) (state and federal officials); cf. Zweibon v. Mitchell, 516 F.2d 594 (D.C.Cir. 1975), cert. denied, 425 U.S. 944 (1976) (federal officials).

13. This administrative policy, set forth in 28 C.F.R. §42.206(a), 37 Fed. Reg. 16671 (Aug. 18, 1972), states an agency preference for referring all matters of noncompliance to the Justice Department for possible litigation, rather than for initiating administrative fund termination proceedings.

Although this administrative policy was violative of the statutory mandate in §518(c) of the Crime Control Act, 42 U.S.C. §3766(c) (Supp. V 1970), it was not even proposed to be changed until three months after this lawsuit was filed against petitioners. See 40 Fed. Reg. 5654 (Dec. 3, 1975). Seven months later LEAA's stated preference for judicial enforcement was ended. 41 Fed. Reg. 28478 (July 12, 1976).

For a comparison of the old regulation with the new one, see C.A. Addendum: Statutes and Regulations at 67-69.

hierarchy who functioned in a manner analogous to a judicial officer or a prosecuting attorney.

3. In Butz, where the respondent had been a defendant in an administrative proceeding, the Court accorded the two prosecutorial officials an absolute immunity primarily in reliance upon the fact that "[t]he defendant in an enforcement proceeding has ample opportunity to challenge the legality of the proceeding." 438 U.S. at 515. "Because the legal remedies already available to the defendant in such a proceeding provide sufficient checks on agency zeal," 438 U.S. at 516, an absolute immunity for the prosecutors was held appropriate. Respondents here, however, are in a very different position,[14] for they have no alternative reme-

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14. This case is thus one of the exceptions to the general expectation of Justice White's opinion for the Court in Butz that "there is not likely to be anyone willing and legally able to seek damages from the officials if they do not authorize the administrative proceeding . . . ." 438 U.S. at 515. Respondents here, of course, like the plaintiffs in Legal Aid Society of Alameda County v. Brennan, 607 F.2d 1319 (9th Cir. 1979); Committee for Full Employment v. Blumenthal, 606 F.2d 1062 (D.C.Cir. 1979); and Adams v. Richardson, 480 F.2d 1159 (D.C.Cir. 1973), have sought relief not from an isolated refusal to authorize an administrative proceeding but from an across-the-board refusal of federal officials to carry out their constitutional and statutory civil rights enforcement obligations.

dies against petitioners except a suit for injunctive relief to obtain enforcement of their constitutional and statutory rights and a suit for damages to redress the past deprivation of those rights. Cf. Davis v. Passman, 442 U.S. 228 (1979); Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

4. Unlike the two officials in Butz who actually acted as prosecutors, neither the petitioners here nor their delegates were clothed with any prosecutorial discretion for the simple reason that their governing statute, §518(c) of the Crime Control Act, 42 U.S.C. §3766(c) (Supp. V 1970), removed any discretion with regard to the initiation of fund termination proceedings against LEAA recipients found to be engaged in discrimination.[15] Not only

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15. For LEAA officials, such as petitioners or their delegates, there was absolutely no discretion whatsoever with regard to initiating fund termination proceedings once there has been a determination of discrimination. At the time this action was commenced §518(c)(2), 42 U.S.C. §3766(c)(2) provided:

> Whenever the Administration [LEAA] determines that a State government or any unit of general local government has failed to comply with paragraph (1) of this subsection [the prohibition against discrimination] or an applica-

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does this statute mandate the initiation of fund termination proceedings in such a situation

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> ble regulation, it shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration shall exercise the powers and functions provided in section 509 of this chapter [initiate the administrative proceedings]. [Emphasis added].

Thereafter, LEAA:

> is authorized concurrently with such exercise --
>
> (A) to institute an appropriate civil action;
>
> (B) to exercise the powers and functions pursuant to title VI of the Civil Rights Act of 1964 (section 2000d of this title); or
>
> (C) to take such other action as may be provided by law.

In summary, once there was a determination of discrimination, petitioners or their delegates were required to initiate fund termination proceedings by requesting the appropriate chief executive to secure compliance. Concurrent with but not before that step, the federal officials were authorized to refer the matter to the Justice Department for the initiation of litigation.

The mandatory nature of this statutory enforcement procedure, distinguishable from the less mandatory directive of Title VI, was hardly an accident. It was

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but this statutory obligation also is inextricably intertwined with petitioners' constitutional obligation not to provide monetary or

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specifically added to §518(c) by the Crime Control Act of 1973, 87 Stat. 214, to make the administrative fund termination proceeding the primary and automatic procedure for civil rights noncompliance rather than allowing LEAA officials to await the outcome of protracted litigation. Representative Barbara Jordan, author of the 1973 amendment, made this abundantly clear:

> The effect of my amendment . . . is to require LEAA to first use the same enforcement procedure which applies to any other violation of LEAA regulations or statutes. That procedure of notification hearings and negotiations is spelled out in section 509, which provides the ultimate sanction of funding cutoff if compliance is not obtained.
>
> This amendment was necessary to reverse LEAA's tradition reliance on court proceedings to correct discrimination, rather than undertaking administrative enforcement of civil rights requirements.

119 CONG. REC. 20071 (1973) (emphasis added).

In view of the statutory mandate, once there had been a determination of noncompliance, there was no discretion, much less any broad prosecutorial discretion, invested in petitioners or their delegates to do other than to initiate the fund termination proceedings. As noted earlier, however, see n.13, supra, petitioners instead maintained a contradictory administrative policy barring the initiation of fund termination proceedings.

other forms of assistance to discriminatory recipients.[16]

In summary, the panel decision below, allowing petitioners a qualified good faith immunity, is fully in accord with this Court's decision in Butz v. Economou, 438 U.S. 478 (1978). The narrow exception recognized in Butz for administrative prosecutors actually engaged in prosecutorial functions is not available to petitioners here, who have been charged with a uniform, willful refusal to carry out their constitutional and statutory civil rights enforcement obligations.

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16. Compare, e.g., Adams v. Richardson, 480 F.2d 1159 (D.C.Cir. 1973) (Title VI), with, e.g., Norwood v. Harrison, 413 U.S. 455 (1973) (Fourteenth Amendment), and Green v. Connally, 330 F.Supp. 1150 (D.D.C.), aff'd sub nom., Coit v. Green, 404 U.S. 997 (1971) (Fifth Amendment). See also NAACP Western Region v. Brennan, 360 F.Supp. 1006, 1012 (D.D.C. 1973) (Title VI and the Fifth Amendment), where the court observed that "both Title VI and the Fifth Amendment impose upon Federal officials not only the duty to refrain from participating in discriminatory practices, but the affirmative duty to police the operations of and prevent such discrimination by State or local agencies funded by them." Cf. Regents of the University of California v. Bakke, 438 U.S. 265 (1978) (Title VI and the Fourteenth Amendment).

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Dated: New York, New York
March, 1981

Respectfully submitted,

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No. 80-1074

In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, ET AL., PETITIONERS

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

1. Whether federal officials are absolutely immune from personal damages liability for their decisions not to initiate administrative action to terminate federal funding to local government agencies that allegedly engage in discriminatory personnel practices.

2. Whether petitioners' failure to terminate federal funding to local government agencies that allegedly discriminate on the basis of race and gender gives rise to a cause of action for damages under the Fifth Amendment.

3. Whether petitioners are entitled to qualified immunity as a matter of law.

PARTIES TO THE PROCEEDING

The parties to this case are petitioners Richard W. Velde, Edward H. Levi, Charles R. Work, and Herbert C. Rice, and respondents National Black Police Association, Inc., Penelope Brace, Bruce Bailey, Kristen Heemstra, Ollie S. Glover, Joel Michelle Schumacher, Raymond Clark, Kent G. McKinney, Penny Orazetti, Roberta Ledyard, Robert Booth, William Harris, and Jennie McKinney.

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No. 80-1074

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 631 F.2d 784. The order of the district court (Pet. App. 28a-29a) is not reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 24a-25a) was entered on May 14, 1980. A petition for rehearing was denied on August 1, 1980 (Pet. App. 27a). On October 21, 1980, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 29, 1980. The petition was filed on that date and was granted on May 4, 1981 (J.A. 495). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law * * *.

2. Section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 206, as reenacted by Section 2 of Pub. L. No. 93-83, 87 Stat. 211, codified at 42 U.S.C. (1970 ed., Supp. V) 3757, provided:

> Whenever the Administration, after reasonable notice and opportunity for hearing to an applicant or a grantee under this chapter, finds that, with respect to any payments made or to be made under this chapter, there is a substantial failure to comply with—
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> (a) the provisions of this chapter;
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> (b) regulations promulgated by the Administration under this chapter; or
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> (c) a plan or application submitted in accordance with the provisions of this chapter;
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> the Administration shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure.

3. Section 518(c) of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 208, as amended by Section 2 of Pub. L. No. 93-83, 87 Stat. 214, codified at 42 U.S.C. (1970 ed., Supp. V) 3766(c), provided:

> (1) No person in any State shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.

(2) Whenever the Administration determines that a State government or any unit of general local government has failed to comply with paragraph (1) of this subsection or an applicable regulation, it shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance. If within a reasonable time after such notification the chief executive fails or refuses to secure compliance, the Administration shall exercise the powers and functions provided in section 3757 of this title, and is authorized concurrently with such exercise—

(A) to institute an appropriate civil action;

(B) to exercise the powers and functions pursuant to title VI of the Civil Rights Act of 1964 (section 2000d of this title); or

(C) to take such other action as may be provided by law.

(3) Whenever the Attorney General has reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

STATEMENT

1. In 1968, Congress created the Law Enforcement Assistance Administration ("LEAA") in order to provide technical and financial assistance to local and state police departments. See Title I of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197-209, codified at 42 U.S.C. 3701 *et seq.*[1] The

[1] In 1979, Congress restructured LEAA, creating a National Institute of Justice, a Bureau of Justice Statistics, and an Office of Justice Assistance, Research, and Statistics. See Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167. These changes do not affect the legal issues presented in this case.

Act authorized the LEAA Administrator to make financial grants to state and local agencies in order to establish state and regional law enforcement planning agencies, to develop and acquire law enforcement equipment and methods, and to recruit and train law enforcement personnel. See 42 U.S.C. 3722-3725, 3731-3750. Pursuant to these provisions, LEAA distributed approximately $7.25 billion in federal funds to state and local agencies between 1969 and 1979. Such funds represent only a small percentage of the operating budget of any recipient police department.[2]

Section 518(c)(1) of the Act prohibits any recipient of LEAA funds from discriminating on the basis of "race, color, religion, national origin, or sex." 42 U.S.C. 3766(c)(1). At all times relevant to this litigation, Section 518(c)(2) provided that upon determining that a recipient of funds is discriminating in violation of the Act or LEAA's regulations, LEAA "shall notify the chief executive of the State of the noncompliance and shall request the chief executive to secure compliance." 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2).[3] Section 518(c)(2) further stated that "[i]f within a reasonable time" LEAA cannot secure voluntary compliance, it "shall exercise the powers and functions provided in section [509]." 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2).[4] Section 509,

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[2] For example, in 1974, the Philadelphia Police Department, which is discussed in respondents' complaint (J.A. 26-28), received a total of less than $800,000 in LEAA grants. The Department's total budget that year was almost $132 million. Thus, LEAA's grants accounted for approximately 0.6% of the 1974 Philadelphia Police Department's budget.

[3] In 1976, Section 518 was substantially amended. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122(b), 90 Stat. 2418. See also pages 22-24, *infra*.

[4] Section 518(c)(2) also authorized LEAA to institute other enforcement proceedings, including an appropriate civil action, to remedy the noncompliance. In addition, Section 518(c)(3) authorized the Attorney General to bring a civil action against a unit of state or local government to remedy any pattern or practice in violation of Section 518(c)(1).

in turn, provided that if, after notice and an opportunity for a hearing, LEAA finds that "there is a substantial failure to comply," it "shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure." 42 U.S.C. (1970 ed., Supp. V) 3757.[5]

2. In 1975, respondents, six blacks and six women and an organization that represents black police officers, filed this suit in the United States District Court for the District of Columbia, challenging LEAA's funding of state and local police departments that allegedly discriminated on the basis of race and gender. Respondents sought "to compel the defendants to terminate all funding to discriminatory law enforcement agencies, and in all other ways to enforce their constitutional and statutory civil rights obligations" (J.A. 13). Named as defendants were the Department of Justice, LEAA, and the four Department of Justice officials who are the petitioners in this Court: Attorney General Edward H. Levi, LEAA Administrator for Administration Richard W. Velde, LEAA Deputy Administrator Charles R. Work, and Director of LEAA Office of Civil Rights Compliance Herbert C. Rice. The four officials were sued in their individual and official capacities.

The individual respondents alleged that state and local police departments that had received and were receiving LEAA grants had discriminated against them.[6] Respondents further alleged that petitioners were re-

[5] Section 509 also was amended in 1976. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122(a), 90 Stat. 2418.

[6] Included among the state and local law enforcement agencies that were alleged to have discriminated against respondents were the police departments of Philadelphia; Des Moines, Ames, and Newton, Iowa; Richmond and Oakland, California; New Orleans; Portland, Oregon; Wayne County, Michigan; Honolulu; and the State of Indiana (J.A. 26-41).

sponsible "for insuring that LEAA funds are not used in a racially or sexually discriminatory manner by recipients of LEAA funding and for enforcing LEAA's constitutional and statutory civil rights obligations" (J.A. 16), and that petitioners' failure to terminate funding to these discriminatory agencies in accordance with Sections 509 and 518 of the Act violated respondents' statutory and constitutional rights by "serv[ing] to finance and thus to perpetuate the discriminatory and exclusionary employment practices of LEAA recipients" (J.A. 26). Respondents sought injunctive and declaratory relief against LEAA and the Department of Justice and $20 million in compensatory and punitive damages from petitioners (J.A. 43-45).

The government moved to dismiss the case or, in the alternative, for summary judgment (J.A. 234-235). In particular, petitioners contended that respondents lacked standing to challenge the refusal to terminate federal funding and that respondents' complaint failed to state a claim upon which relief could be granted. Alternatively, petitioners sought summary judgment on the ground that there was "a rational basis" for the way in which they carried out LEAA's civil rights compliance responsibilities (J.A. 234).[7] Petitioners further argued that they were entitled to official immunity with regard to respondents' claim for damages.[8]

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[7] In support of this motion, petitioners submitted a document prepared by petitioner Velde and entitled "Statement of Reasons—Explanation of LEAA's Role and Activity in Civil Rights Compliance." This document, which was incorporated in petitioner Velde's affidavit (J.A. 243), is reproduced at JA 265-303).

[8] The government also contended that the Crime Control Act of 1976, Pub. L. No. 94-503, Section 122, 90 Stat. 2418, had rendered respondents' claims for injunctive and declaratory relief moot. The district court agreed (Pet. App. 28a-29a), but the court of appeals reversed on this point (*id.* at 3a-4a, 8a). We have not sought review of this aspect of the court of appeals' decision, and further proceedings in the district court concerning respondents' claims for declaratory and injunctive relief have been postponed pending this Court's resolution of the present controversy.

On December 8, 1976, the district court dismissed the complaint, relying on *Barr* v. *Matteo*, 360 U.S. 564 (1959). The court stated that petitioners' "challenged actions * * * clearly fall within the outer perimeter of the line of their official duties * * * [and that c]onsequently [respondents'] claims for monetary damages against the defendants in their individual capacities are barred by the doctrine of official immunity" (Pet. App. 28a-29a).[9]

A divided panel of the court of appeals reversed. The court of appeals recognized that in *Butz* v. *Economou*, 438 U.S. 478, 508-517 (1978), this Court established that administrative officials who perform prosecutorial functions are absolutely immune from personal damages liability (Pet. App. 5a). The court concluded, however, that petitioners "have virtually no discretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients" (*id.* at 6a). Be-

[9] As we discuss in greater detail below (see pages 23-26, *infra*), the record shows that petitioners had very different roles and responsibilities regarding LEAA funding. Petitioner Levi was not involved in the day-to-day decisions regarding LEAA funding, although, as Attorney General, he did have general authority over LEAA. Moreover, several employment discrimination suits were initiated against major police departments or agencies while he was Attorney General (J.A. 247-250). Similarly, although petitioner Velde delegated most responsibility for civil rights compliance to the Director of the Office of Civil Rights Compliance, he did engage in several attempts to secure voluntary compliance and initiated and participated in various programs designed to increase civil rights compliance and awareness among LEAA funding recipients (J.A. 236-243, 265-303). Petitioner Work's only direct contact with LEAA's civil rights compliance efforts concerned his promulgation of regulations prohibiting discrimination and his role in aiding respondent Brace in her suit against the Philadelphia Police Department (J.A. 251-254). Finally, petitioner Rice had primary responsibility for promulgating and enforcing LEAA's civil rights regulations and guidelines, and he exercised broad discretion in allocating prosecutorial resources and in choosing appropriate methods to effectuate LEAA's civil rights compliance program (J.A. 262-264).

cause, in the court's view, "[t]he minimal matters left to LEAA's judgment * * * do not rise to the level of prosecutorial discretion that is protected by absolute immunity" (*ibid.*), petitioners are entitled merely to a qualified immunity with regard to their decisions not to terminate LEAA funding (*id.* at 6a-7a). Declining to address petitioners' arguments that their failure to terminate funding did not give rise to a cause of action for damages under the Due Process Clause and that in any event the record before the district court established petitioners' entitlement to a qualified immunity, the court of appeals remanded for trial.[10]

Judge Tamm dissented on the ground that petitioners are entitled to absolute immunity. Judge Tamm observed that the absolute immunity recognized in *Economou* for officials who initiate administrative proceedings must apply as well to those who decline to move forward with such proceedings (Pet. App. 16a-17a). Otherwise, he explained, the existence of a one-sided immunity would create an unwarranted and improper bias in favor of prosecution (*ibid.*). Judge Tamm further concluded that petitioners' decisions to seek voluntary compliance rather than to initiate fund termination proceedings are "exactly what the Supreme Court had in mind when it spoke of functions 'analogous to those of a prosecutor' " (*id.* at 17a, quoting *Butz* v. *Economou*, *supra*, 438 U.S. at 515).

In addition, Judge Tamm disagreed with the majority's conclusion that petitioners lacked discretion regarding the termination of funding under Sections 509 and 518 of the Act (Pet. App. 17a-20a). Noting that Congress

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[10] The court of appeals also held that respondents had sufficiently alleged standing (Pet. App. 7a n.16). Judge Tamm agreed that respondents "have standing adequate to survive a motion to dismiss" (*id.* at 8a), although he expressed substantial doubt whether respondents would actually be able to prove that petitioners' conduct had caused respondents' alleged injuries or that the relief requested would redress the injuries claimed (*id.* at 8a-14a).

had amended those provisions in 1976 precisely because it believed that LEAA had too much discretion (Pet. App. 20a), Judge Tamm observed that the Act required petitioners to determine (1) whether a recipient was discriminating, (2) whether the recipient or the state was attempting to comply voluntarily within "a reasonable time," (3) whether the failure to comply was "substantial," and (4) whether a partial or complete fund termination was appropriate (*id.* at 17a-20a).

SUMMARY OF ARGUMENT

I

A. Petitioners are entitled to absolute immunity because they performed functions analogous to those of a prosecutor. In *Butz* v. *Economou*, 438 U.S. 478, 515-516 (1978), this Court recognized that government officials who must decide whether to initiate administrative proceedings play a role similar to that of a prosecutor who must decide whether to press criminal charges. For this reason, the Court held that administrative officials, like a prosecutor, are entitled to absolute immunity from damages liability based on their prosecutorial decisions. See *Imbler* v. *Pachtman*, 424 U.S. 409 (1976). This immunity is essential to ensure that officials may exercise their discretion in deciding whether to commence administrative enforcement action free from the intimidation or influence inevitably associated with the possibility of civil liability in the event their decisions prove unpopular or wrong.

The absolute immunity recognized in *Economou* and *Imbler* must apply whether the official's decision is to proceed with administrative enforcement action or to eschew a particular enforcement method. Otherwise, if the immunity applied only when the decision was in favor of administrative action, it would skew the official's exercise of his discretion in the direction of initiating enforcement proceedings in every close or controversial

case. If, for example, a prosecutor knew that he would be immune from civil liability if he sought an indictment and proceeded to trial but not if he decided that prosecution was not warranted, the partial immunity might well influence prosecutors to resolve doubtful cases in favor of prosecution.

Here, petitioners' decisions concerning whether to pursue funding termination as a response to allegations of illegal employment discrimination by law enforcement agencies receiving LEAA funds are entitled to the absolute immunity recognized in *Economou* and *Imbler*. Contrary to the court of appeals' assertion, petitioners exercised substantial discretion in deciding whether and under what circumstances to invoke the funding termination option against particular recipients of federal funds. Petitioners were required to evaluate, *inter alia*, the nature and extent of the alleged noncompliance with statutory nondiscrimination guarantees, the likely efficacy of various administrative or judicial measures for eliminating any discrimination that did occur, and the potential effects on local law enforcement if LEAA funds were terminated. These are precisely the kinds of official judgments that require the protection recognized in *Economou* if they are to be made with freedom from the fear of possible civil liability.

B. Notwithstanding respondents' contrary submission, the relevant provisions of the amended Omnibus Crime Control Act, Sections 509 and 518, did authorize petitioners to make discretionary decisions concerning when to seek funding termination as a result of discriminatory action by a recipient agency. The use of the word "shall" in Sections 509 and 518 was not meant to impose a mandatory duty to institute fund termination proceedings any more than the word "shall" in various criminal statutes obliges the United States Attorney to seek an indictment in every case where the facts would sustain a conviction. Moreover, even if respondents are correct about the meaning of "shall" in these provisions of the

Act, petitioners, as the responsible Department of Justice officials, still had to exercise significant discretion before the supposed command of the statute even became applicable. Petitioners were required to determine, before any funding termination could occur, (i) that a particular recipient agency was not in compliance with the Act's anti-discrimination provisions, (ii) that notification of the Governor of the state involved had not secured compliance within a reasonable time, and (iii) that the noncompliance was sufficiently substantial to justify partial or complete funding termination under Section 509. All of these are discretionary judgments for which petitioners are entitled to absolute immunity.

C. The role of the different petitioners with respect to the LEAA civil rights enforcement process varied, but to the extent that each petitioner was involved at all in the matters addressed in respondents' complaint, he performed functions analogous to those of a prosecutor. The duties of each petitioner in this regard are described in the uncontradicted affidavits filed by petitioners in the district court and in the detailed "Statement of Reasons" accompanying petitioner Velde's affidavit. These materials, summarized in the text at pages 23-26, *infra*, show that the involvement of each petitioner in the LEAA compliance program resembled the typical discretionary conduct of a prosecutor, either in the formulation of overall enforcement policy, or in the application of that policy to particular cases, or both. Each petitioner, therefore, is entitled to absolute immunity for his part in the events of which respondents complain.

II

A. Respondents' request for damages should be dismissed, because the complaint does not state a claim on which relief can be granted. Respondents' grievance principally concerns alleged racial and sexual discrimination by law enforcement agencies receiving LEAA funds. But the complaint does not accuse petitioners of causing

this discrimination, participating in it, or purposefully encouraging it to continue. Rather, respondents seek to recover substantial compensatory and punitive damages solely because of petitioners' failure to initiate funding termination proceedings in response to the alleged discrimination. This assertion does not state a cause of action under the Due Process Clause of the Fifth Amendment.

In order to establish that official government action violated the Fifth Amendment, a plaintiff must prove not only a discriminatory effect but also an improper discriminatory purpose. See, *e.g.*, *Washington* v. *Davis*, 426 U.S. 229, 239 (1976). Here, respondents have not alleged that petitioners intended to assist law enforcement agencies in their discriminatory practices, and the record contains no evidence of such an impermissible purpose on the part of any petitioner. To the contrary, the record establishes that petitioners took extensive actions in an effort to eliminate discrimination by recipients of LEAA funds. In the absence of any factual allegation suggesting that petitioners' failure to institute fund termination proceedings as a method of securing compliance occurred "because of," rather than "in spite of," its supposed adverse effects on respondents, the claim for damages should be dismissed. *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U.S. 256, 279 (1979).

B. Respondents' complaint also is deficient because it fails to allege an adequate causal connection between petitioners' actions and respondents' injury. See, *e.g.*, *Martinez* v. *California*, 444 U.S. 277 (1980); *Rizzo* v. *Goode*, 423 U.S. 362 (1976). Respondents allegedly were the victims of discriminatory practices by LEAA-funded agencies. They have not explained, however, how this injury is directly attributable to petitioners' failure to initiate funding termination proceedings. "Grants of federal funds generally do not create a partnership or joint venture with the recipient, nor do they serve to convert the acts of the recipient from private acts to

governmental acts absent extensive, detailed, and virtually day-to-day supervision." *Forsham* v. *Harris*, 445 U.S. 169, 180 (1980).

Respondents have made no specific factual allegations concerning a relationship between the alleged discriminatory practices and petitioners' civil rights compliance program. They can only speculate about how changes in that program might have affected the conduct of agencies receiving LEAA funds. Particularly in view of the fact that LEAA grants typically comprised only a small percentage of a recipient agency's total annual budget, such speculation is an inadequate ground on which to base a damages claim against federal officials. See *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976).

III

At a minimum, petitioners are entitled to qualified immunity as a matter of law. Under this Court's decisions in *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974), and *Butz* v. *Economou*, *supra*, government officials charged with constitutional violations may invoke a qualified immunity if they acted with a reasonable, good-faith belief that their actions were lawful. In the present case, the record plainly shows that petitioners made extensive efforts to enforce the antidiscrimination provisions of the Act. Petitioners' undisputed affidavits, including the "Statement of Reasons" and its appendix, demonstrate that LEAA continually pursued a wide-ranging civil rights enforcement program throughout the period covered by the complaint. Petitioners had no reason to believe that they were acting unreasonably in selecting "[c]ooperation and voluntary compliance * * * as the preferred means for achieving [the] goal" of eliminating employment discrimination. *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 44 (1974).

Moreover, no previous decision of this Court or any court of appeals has held that, by failing to terminate

funds to local agencies that discriminate on the basis of race or sex, federal officials violate the constitutional rights of those who are the victims of the discrimination. Nor have respondents suggested any other source from which petitioners could have learned that their preference to pursue, in the first instance, enforcement methods less drastic than funding termination violated respondents' constitutional rights. Finally, at the time of the acts alleged in the complaint, it was not even "clearly established" (*Wood* v. *Strickland*, 420 U.S. 308, 322 (1975)) that the height and weight requirements and written examinations used by many local police departments violated equal protection principles. In these circumstances, the only conclusion that can be supported by the record is that petitioners acted in a reasonable, good-faith belief that their conduct was lawful. They are, accordingly, entitled to qualified immunity as a matter of law.

ARGUMENT

I. FEDERAL OFFICIALS ARE ABSOLUTELY IMMUNE FROM PERSONAL DAMAGES LIABILITY FOR THEIR DECISIONS NOT TO INITIATE ADMINISTRATIVE ACTION TO TERMINATE FEDERAL FUNDING TO LOCAL GOVERNMENT AGENCIES THAT ALLEGEDLY ENGAGE IN DISCRIMINATORY EMPLOYMENT PRACTICES

A. In *Butz* v. *Economou*, 438 U.S. 478 (1973), this Court held that federal officials charged with unconstitutional acts ordinarily have only a qualified immunity from damages liability, dependent on proof that they acted reasonably and in good faith. The Court also held, however, that certain functions exercised by executive officials require a full exemption from liability, "where it is demonstrated that absolute immunity is essential for the conduct of the public business." *Id.* at 507. In particular, the Court held that just as absolute immunity is required to protect officials who prosecute criminal cases (*Imbler* v. *Pachtman*, 424 U.S. 409 (1976); see also

Ferri v. *Ackerman*, 444 U.S. 193, 202-205 (1979)), similar protection is necessary for officials who institute administrative proceedings (438 U.S. at 515-516):

> We * * * believe that agency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts. The decision to initiate administrative proceedings against an individual or corporation is very much like the prosecutor's decision to initiate or move forward with a criminal prosecution. An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought.
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> * * *
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> The discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete. * * * * *
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> We believe that agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment.

Although *Economou* concerned an administrative decision to bring charges, the Court left no doubt that the same protections must apply to administrative decisions not to initiate a proceeding: just as a criminal prosecutor has absolute immunity "in deciding what suits to bring" (*Imbler* v. *Pachtman*, *supra*, 424 U.S. at 424), so too an administrative official may not be held personally liable for determining "whether a proceeding should be brought" (*Butz* v. *Economou*, *supra*, 438 U.S. at 515). In the absence of such protection, a significant bias would be introduced into the official's decisionmaking process. The incentive would be strong to resolve close questions in favor of the commencement of administrative action, in order to minimize the potential for civil damages liability in the event of an error. *Ibid.* See

also *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 426 n.24, 431 n.33; *Yaselli* v. *Goff*, 12 F.2d 396, 404-406 (2d Cir. 1926), aff'd mem., 275 U.S. 503 (1927).

As Judge Tamm commented in his dissenting opinion (Pet. App. 16a-17a), the imposition of personal damages liability on an administrative official for failing to begin an enforcement proceeding would substantially eviscerate the discretion that the absolute immunity recognized in *Economou* is designed to protect. The determinations whether, or how, to enforce a particular statute in a particular context, whether to decline enforcement, or whether to institute a proceeding but to limit the charges or to seek only certain types of relief, are inextricably interrelated aspects of the same decisionmaking process. Cf. *Marshall* v. *Jerrico, Inc.*, 446 U.S. 238, 249 (1980). The nature of a government official's inquiry and deliberations remains the same regardless of the outcome of the decisional process. A rule that would fully protect decisions to prosecute but would extend only qualified immunity to decisions not to prosecute would distort the exercise of prosecutorial discretion in favor of prosecution. See *Butz* v. *Economou*, *supra*, 438 U.S. at 515; *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 426 n.24. An official fearful of the personal consequences of his prosecutorial decisions could protect himself fully only by instituting full-scale proceedings on every complaint that comes before him, regardless of merit. Particularly in doubtful, close, or controversial cases, prosecutors would be unable to exercise their responsibilities "free from intimidation or harassment" (*Butz* v. *Economou*, *supra*, 438 U.S. at 516), and the result would be not "principled and fearless decision-making but * * * intimidation." *Pierson* v. *Ray*, 386 U.S. 547, 554 (1967).

The present litigation is based on LEAA's alleged failure to take action to enforce statutory civil rights provisions applicable to its grantees. The gist of the complaint with respect to the four petitioners is that they failed to institute proceedings to terminate LEAA fund-

ing to recipient agencies that were allegedly discriminating against respondents. The claims against the petitioners relate directly to the decisions they made in choosing the means to achieve compliance—whether by voluntary means, judicial action, or resort to formal fund termination proceedings. Indeed, the allegations of respondents' complaint highlight the kinds of difficult prosecutorial decisions that generally confront federal officials who are responsible for enforcing the various funding termination statutes. Respondents alleged that petitioners had relied too heavily on ineffective attempts to secure voluntary compliance and had pursued legal remedies other than the drastic measure of terminating LEAA funding. See J.A. 27-28, 36-38.[11] In addition, respondents asserted that petitioners had declined to investigate or initiate fund termination suits because the discrimination alleged was de minimis or uncertain in nature or because the grantee was already involved in litigation or subject to a court order designed to secure compliance. See J.A. 31-36, 39-41.[12]

Regardless of whether petitioners' judgment on these matters might be viewed by others as correct, their decisions concerning the allocation of prosecutorial resources and the exercise of prosecutorial discretion are precisely the kind of decision-making that the Court has

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[11] For example, the complaint alleges that petitioners made "unsuccessful efforts to achieve voluntary civil rights compliance from the Philadelphia Police Department" (J.A. 27) and that, although petitioners formally referred this matter to the Civil Rights Division of the Department of Justice for legal action, they failed to initiate funding termination proceedings (J.A. 27-28).

[12] Prosecutors, of course, enjoy absolute immunity with regard to the decision whether or not to investigate as well as whether or not to commence formal judicial proceedings. See, *e.g.*, *Marrero* v. *City of Hialeah*, 625 F.2d 499, 505-506 n.8 (5th Cir. 1980); *Lee* v. *Williams*, 617 F.2d 320 (2d Cir. 1980); *Forsyth* v. *Kleindienst*, 599 F.2d 1203, 1212-1214 (3d Cir. 1979), cert. denied, No. 79-1120 (June 29, 1981). Cf. *Kipps* v. *Ewell*, 538 F.2d 564, 566 (4th Cir. 1976).

sought to insulate from the intimidation and distortion that accompanies the possibility of personal damages liability. See *Butz* v. *Economou*, *supra*, 438 U.S. at 515-516; *Ferri* v. *Ackerman*, *supra*, 444 U.S. at 202-204. See also *United States* v. *Lovasco*, 431 U.S. 783, 791-795 (1977).[13] A qualified immunity, which would often necessitate an inquiry into the prosecutor's motivations and the intimate details of his decisionmaking process, would plainly "disserve the broader public interest * * * [by] prevent[ing] the vigorous and fearless performance of the prosecutor's duty * * *." *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 427.

B. The court of appeals nonetheless held that petitioners are not entitled to absolute immunity, because, in the court's view, petitioners had "virtually no discretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients" (Pet. App. 6a). This is incorrect. As Judge Tamm observed (*id.* at 17a-20a), Sections 509 and 518, like numerous other statutes governing the termination of federal funding, require the exercise of substantial administrative discretion.[14] Indeed, because the cutoff of fed-

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[13] We do not suggest that an administrative prosecutor's decisions are immune from judicial review altogether. In appropriate circumstances, an administrative decision may be subject to limited judicial review. See, *e.g.*, *Marshall* v. *Jerrico, Inc.*, *supra*, 446 U.S. at 249; *Cannon* v. *University of Chicago*, 441 U.S. 677, 707 n.41 (1979); *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975). But such injunctive or declaratory actions are a far cry from the personal damages suit presented here. See *Dennis* v. *Sparks*, No. 79-1186 (Nov. 17, 1980), slip op. 7.

[14] As indicated above, Congress amended Sections 509 and 518 in 1976, after the commencement of this suit. See Crime Control Act of 1976, Pub. L. No. 94-503, Section 122, 90 Stat. 2418; Pet. App. 7a n.16, 20a-21a n.16. Those amendments do not affect the issues presented by this case. We further note that the pre-1976 versions of Sections 509 and 518 are typical funding termination provisions. See, *e.g.*, Comprehensive Employment and Training Act of 1973, 29 U.S.C. (Supp. II) 834(b), 816(c); Title VI of the Civil Rights Act

eral funds may often cause serious dislocation and harm to innocent third parties, federal officials, including petitioners, have traditionally enjoyed broad authority to decide whether and when to initiate fund termination proceedings or to take other remedial administrative action.[15] Cf. *Marshall* v. *Jerrico, Inc.*, *supra*, 446 U.S. at 248-249.

Sections 509 and 518, like other funding termination provisions (see note 14, *supra*), vest broad enforcement discretion in the appropriate Justice Department officials. At a minimum, just as a prosecutor must decide whether the evidence supports a criminal charge, so too petitioners needed to make an initial determination whether a recipient of LEAA funding "ha[d] failed to comply with" the nondiscrimination provision of the statute and the accompanying LEAA regulations.[16] See 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2).[17] Cf. *Dunlop* v. *Bachowski*, 421 U.S. 560, 571 (1975). In addition, after notifying the grantee state's governor of the noncompliance, pe-

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of 1964, 42 U.S.C. 2000d-1; Housing and Community Development Act of 1974, 42 U.S.C. 5309, 5311(a); Urban Mass Transit Act, 49 U.S.C. (Supp. II) 1615.

[15] Application of this principle is especially appropriate in the employment discrimination context, where this Court has emphasized the strong congressional policy favoring "[c]ooperation and voluntary compliance * * * as the preferred means for achieving" the statutory goal. *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 44 (1974).

[16] That determination ordinarily entails consideration of a complex variety of factors, including recruitment efforts, size and characteristics of the applicant pool, and legal adequacy of preselection testing procedures.

[17] Sections 509 and 518 focus on LEAA's authority and responsibilities rather than the responsibility of the individual federal officials. Petitioners as a group generally exercised this authority and responsibility, although their roles in or regarding LEAA were quite different. See note 9, *supra*, and pages 25-28, *infra*.

titioners had broad discretion to determine whether "within a reasonable time" the governor or LEAA grantee had taken appropriate steps to comply voluntarily. See 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2). Moreover, because funding termination could be predicated only on a showing of "substantial" noncompliance (42 U.S.C. (1970 ed., Supp. V) 3757), petitioners could not properly commence a funding termination proceeding even after exhausting voluntary methods of compliance unless they concluded that the evidence would show a substantial violation. Finally, Sections 509 and 518 plainly authorized petitioners to pursue various different enforcement remedies, including partial as well as complete funding termination. See 42 U.S.C. (1970 ed., Supp. V) 3757, 3766(c)(2) and (3).

Furthermore, we submit that petitioners had discretion to decline commencement of a fund termination proceeding even though the evidence may have indicated that a grantee was engaged in substantial discrimination. Such discretion necessarily includes the determination whether the investment of resources likely to be required to pursue such legal action successfully could be justified in light of the number and importance of competing claims on LEAA and Department of Justice efforts. In the criminal law enforcement area, there is general recognition that "[f]unding levels determine how many cases can be brought and inevitably force prosecutors' offices to give little or no attention to many chargeable crimes. Limited funding may also preclude some complex, costly investigations and prosecutions." Vorenberg, *Decent Restraint of Prosecutorial Power*, 94 Harv. L. Rev. 1521, 1542-1543 (1981).

To be sure, Section 518(c)(2) states that "[i]f within a reasonable time after such notification the chief executive [of the grantee state] fails or refuses to secure compliance, the Administration *shall* exercise the powers and functions provided in section [509]." 42 U.S.C. (1970 ed., Supp. V) 3766(c)(2) (emphasis added). But

most provisions for enforcement of the criminal law, including 28 U.S.C. 547, which provides that the United States Attorneys "*shall* * * * prosecute for all offenses against the United States," are also written in mandatory terms.[18] It is nonetheless well settled that a federal prosecutor has broad discretion, unreviewable by the judiciary, not to prosecute even if there is substantial evidence of guilt. See, *e.g.*, *United States* v. *Batchelder*, 442 U.S. 114, 124 (1979); *Bordenkircher* v. *Hayes*, 434 U.S. 357, 364 (1978); *United States* v. *Nixon*, 418 U.S. 683, 693 (1974); *Newman* v. *United States*, 382 F.2d 479, 480 (D.C. Cir. 1967) (Burger, J.); *United States* v. *Cox*, 342 F.2d 167 (5th Cir.) (en banc), cert. denied, 381 U.S. 935 (1965). Likewise, this Court has repeatedly observed that administrative prosecutors possess similarly broad discretion notwithstanding the seemingly mandatory language of the particular statutory scheme. See, *e.g.*, *Marshall* v. *Jerrico, Inc.*, *supra*, 446 U.S. at 248; *Dunlop* v. *Bachowski*, *supra*, 421 U.S. at 571-573; *Vaca* v. *Sipes*, 386 U.S. 171, 182 (1967); *Moog Industries, Inc.* v. *FTC*, 355 U.S. 411, 413-414 (1958).

The legislative history of the Act confirms that petitioners possessed substantial discretion with regard to the initiation of funding termination proceedings. When the antidiscrimination provision at issue in this case, Section 518(c), was added to Title I of the Act in 1973, Section 509 was reenacted without change. The funding termination provision that petitioners were allegedly obliged to invoke was thus identical to Section 509 as originally enacted in 1968. Section 509, in other words, was couched in "mandatory" terms, before any prohibition against discrimination ever appeared in the Act. From the beginning, however, Congress made plain that the use of the word "shall" was not intended to cabin the authority of the responsible administrative officials.

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[18] The typical federal criminal statute provides that whoever commits a prohibited act *shall* be punished. See, *e.g.*, 18 U.S.C. 371, 1001.

The House Report accompanying the 1968 legislation explained that "the Attorney General *may* terminate or suspend payments * * * on a finding [that] there is a substantial failure to comply" with any provision of the statute and that he has "broad discretionary power" over the funding termination process. H.R. Rep. No. 488, 90th Cong., 1st Sess. 14, 26 (1967) (emphasis added). See also S. Rep. No. 1097, 90th Cong., 2d Sess. 85-86 (1968).

In amending the Act in 1973, Congress did not divest LEAA of its broad discretion. On the contrary, the pertinent legislative history shows that the LEAA funding termination provisions were patterned after the discretionary cutoff provisions in Title VI of the Civil Rights Act and various revenue sharing statutes and that it therefore was not intended that LEAA funding would automatically be suspended merely because a grantee had engaged in discrimination. See, *e.g.*, 119 Cong. Rec. 19702 (1973) (remarks of Rep. Rodino) ("the bill reiterates the antidiscrimination requirements of title VI of the Civil Rights Act of 1964, but also prohibits discrimination on the basis of sex. The bill strengthens the ban on discrimination by making clear that the fund cutoff provisions of Section 509 of the act and of title VI of the Civil Rights Act of 1964 both apply, and that appropriate civil actions may be filed by [LEAA], and that 'pattern and practice' suits may be filed by the Attorney General"); *id.* at 20097 (remarks of Rep. Jordan); *ibid.* (remarks of Rep. Hutchinson); *id.* at 22045 (remarks of Sen. McClellan); *id.* at 22075 (remarks of Sen. Javits); *Amendments to Title I (LEAA) of the Omnibus Crime Control and Safe Streets Act of 1968: Hearing Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary*, 93d Cong., 1st Sess. 183 (1973).[19] Indeed, Congress again

[19] The statement by Representative Jordan on which respondents rely in their Brief in Opposition (Br. 16 n.15) is not inconsistent with this position. Contrary to the impression that respondents

amended Sections 509 and 518 in 1976, after the events alleged in respondents' complaint had occurred, precisely because it thought that LEAA retained too much

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attempt to convey, Representative Jordan was not addressing the alleged contrast between the funding termination provisions in Title VI and those in the Act, labelling the former discretionary and the latter mandatory. Rather, she was explaining the difference between the House bill's antidiscrimination provision, which she supported, and the comparable provision contained in the bill proposed by the Nixon Administration. Compare Section 518(b)(2) of the amended Act proposed in H.R. 8152, 93d Cong., 1st Sess. (1973), with Section 308(b) of the amended Act proposed in S. 1234, 93d Cong., 1st Sess. (1973), reprinted respectively in the *Senate Hearing*, *supra*, at 132 and 39-40. The Administration bill would have listed exercise of the funding termination powers provided in Section 509 of the Act as merely one of the available enforcement options that LEAA could choose if notification of a grantee state's governor failed to secure compliance within a reasonable time. The House bill, by contrast, and Representative Jordan's remarks in support of it, were intended to make clear, not that LEAA officials and the Attorney General lacked discretion in their enforcement of the Act, but that the funding termination procedure set forth in Section 509 was to be regarded as the preferred enforcement device, one ordinarily to be employed with or before other enforcement options. This is the same point made in the Conference Committee Report explaining the adoption of the House bill's approach in this regard. H.R. Conf. Rep. No. 93-401, 93d Cong., 1st Sess. 32 (1973). And, in any event, even if respondents' interpretation of Representative Jordan's remarks is correct, there remains the fact that, before the so-called mandatory provisions of Section 518(c)(2) would have come into play, LEAA would first have had to make the discretionary determinations that a state or local recipient agency was not in compliance with the Act's antidiscrimination provisions, that notification of the state's governor had not secured compliance within a reasonable time, and that the noncompliance was sufficiently substantial to justify partial or complete funding termination under Section 509. See pages 19-20, *supra*. In short, Representative Jordan's remarks, even if read as respondents suggest (and even if reflective of the will of Congress as a whole; see *CPSC* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980)), do not negate the proposition that petitioners possessed broad discretion in their administration of the Act's antidiscrimination provision.

discretionary authority. See, *e.g.*, H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. 11, 25-27 (1976); 122 Cong. Rec. 28498 (1976) (remarks of Rep. McClory).

Respondents acknowledge that this Court in *Economou* recognized an absolute immunity for administrative officials who exercise civil enforcement responsibilities analogous to those of prosecutors (Br. in Opp. 9 & n.10), but they contend that this case is not controlled by that ruling because this suit "was not brought by a single disgruntled individual or corporation complaining about an individual enforcement decision made by petitioners" (*id.* at 9). Respondents argue that their complaint stands on a different footing because it alleges a "long-standing and consistent refusal to carry out *any* of [petitioners'] constitutional and statutory civil rights enforcement obligations" (*id.* at 10). Respondents' proposed distinction is unpersuasive and reflects a misunderstanding of the way in which prosecutorial and civil enforcement decisions routinely are made.

It is obviously true that prosecutors are repeatedly faced with the need to determine whether a particular suspect should be prosecuted and, if so, for what offense. They are also frequently confronted, however, with broader questions that involve more than a single case. They must decide how to expend scarce resources, how to divide enforcement responsibilities with prosecutors in other jurisdictions, and how best to achieve overall law enforcement goals. A federal prosecutor might decide, for example, generally to leave unarmed bank robbery prosecutions to the local district attorney, in order to conserve the scarce resources of the United States Attorney's office for matters thought more demanding of its attention. Similarly, a prosecutor might decide not to pursue cases in which a suspect is charged with the possession of a small amount of marijuana or obscene materials, on the theory that more important law enforcement objectives should not be sacrificed in favor of numerous prosecutions for a relatively minor offense. See,

e.g., *Thompson* v. *United States*, 444 U.S. 248, 250 (1980); *Rinaldi* v. *United States*, 434 U.S. 22, 24 n.5 (1977); *Redmond* v. *United States*, 384 U.S. 264, 265 (1966).

Under respondents' apparent conception of the prosecutorial immunity recognized in *Economou* and *Imbler*, decisions such as these presumably would not be entitled to protection, because their application extends more widely than to a single case. But decisions of this kind are essential to a prosecutor's effective performance of his task, and the need for full immunity from personal damages liability is at least as great in this context as it is in the heat of a trial. For similar reasons, petitioners' alleged decisions regarding the general efficacy or desirability of fund termination proceedings as a primary means of combating discrimination are entitled to absolute protection from damages liability. Respondents cannot avoid the dispositive significance of *Economou* and *Imbler* simply by arguing that the prosecutorial actions in dispute here affected more persons than the particular conduct challenged in the earlier cases.

C. The uncontradicted record evidence of petitioners' various responsibilities in the LEAA enforcement process confirms the entitlement to immunity that is evident on the face of respondents' complaint.

1. *Rice.* Petitioner Rice was the Director of the LEAA Office of Civil Rights Compliance. The Administrator delegated to Rice the responsibility for ensuring that recipients of LEAA funds complied with applicable civil rights provisions. In the exercise of that authority, Rice was responsible for developing programs and procedures for enforcement, investigating discrimination complaints filed against recipient agencies, negotiating to achieve voluntary compliance, assisting in the preparation of compliance cases, and recommending the imposition of sanctions, if necessary (J.A. 262-263, 244-245). He also conducted compliance reviews of the employment practices of recipient agencies, and he monitored existing

voluntary compliance agreements to assure continuing compliance by the agencies involved. In short, Rice was the official who, on a day-to-day basis, made the discretionary judgments in LEAA's civil rights compliance program. His functions were unquestionably analogous to those of a prosecutor "in deciding whether a proceeding should be brought and what sanctions should be sought." *Butz* v. *Economou*, *supra*, 438 U.S. at 515. Accordingly, like a United States Attorney or an Assistant United States Attorney, he is absolutely immune from personal damages liability based on his prosecutorial decisions or recommendations.

2. *Work.* Petitioner Work was LEAA's Deputy Administrator for Administration. His uncontradicted affidavit establishes that his only direct involvement in LEAA's civil rights compliance efforts occurred in the case involving respondent Brace. Immediate action was required to insure that Officer Brace would not be dismissed from the Philadelphia Police Department. Work, who knew the Assistant Attorney General of the Civil Rights Division personally, relayed to him a request that the Division take action (J.A. 253). Work subsequently notified Philadelphia officials on behalf of LEAA that further grant requests would not be approved until LEAA was assured that Officer Brace had been permanently restored to duty (*ibid.*). To the extent Work was involved at all in the activities of which respondents complain, it was in the initiation of legal action against the Philadelphia Police Department in the *Brace* case and in the resolution of that controversy. His conduct was like that of a prosecutor in beginning a prosecution and subsequently resolving the charges brought. He is therefore entitled to absolute immunity from this suit.

3. *Velde.* Petitioner Velde, then Administrator of LEAA, delegated the day-to-day responsibility for civil rights compliance to the Director of the Office of Civil Rights Compliance (J.A. 236-237, 244-246). However, he retained responsibility for the basic policy and direction LEAA would pursue to meet its civil rights obligations.

This policy is described in detail in the "Statement of Reasons" incorporated by reference in Velde's affidavit in the district court (J.A. 243, 265-303). Velde directed the development of a Master Plan and Statement of Priorities for civil rights compliance, which became final, after opportunity for comment, in February 1976. In addition, Velde was asked occasionally to take action personally in pending cases by informing the recipient agencies involved of their alleged non-compliance and by attempting to achieve voluntary compliance as an alternative to administrative action to terminate funding (J.A. 238, 241-243). The record thus establishes that, when Administrator Velde took direct action in civil rights matters, he sought to obtain compliance with the Act's antidiscrimination provisions and, in his supervisory capacity, he set the policy for those involved in day-to-day compliance efforts to follow. He acted, in other words, in a prosecutorial role, establishing general enforcement policy and implementing that policy in specific cases. He is therefore entitled to absolute immunity from respondents' claim for damages.

4. *Levi.* Petitioner Levi, then the Attorney General, exercised only powers of general policy guidance and review over LEAA. He was not ordinarily involved in the details of the grant process, and he did not exercise day-to-day supervision over LEAA operations (J.A. at 247-248). In his general policy guidance role, he followed an overall compliance policy that was consistent with the Act and that sought to encourage voluntary compliance as an alternative preferable to funding termination (J.A. 248). In addition, as part of the Justice Department's efforts to secure compliance with antidiscrimination provisions, the Civil Rights Division sought judicial remedies against some recipient agencies alleged to have engaged in discriminatory employment practices, and the Attorney General was aware of these efforts (J.A. 249-250). Accordingly, to the extent that he was involved at all in the matters treated in the complaint, Attorney Gen-

eral Levi provided guidance on enforcement policy and used alternative judicial remedies to achieve compliance. With respect to both of these roles, he is entitled to absolute immunity.

In their various capacities, petitioners unquestionably performed functions analogous to those of prosecutors in determining how to enforce LEAA's civil rights requirements. They determined policy regarding compliance and enforcement and, consistent with their respective roles, applied that policy to individual cases. The involvement of each petitioner was identical in kind and degree to one or more of the tasks typically performed by prosecutors in determining which cases to pursue and how to pursue them. Accordingly, petitioners are entitled to absolute immunity from personal damages liability based on the exercise of their administrative law enforcement responsibilities. *Butz* v. *Economou*, *supra*; *Imbler* v. *Pachtman*, *supra*.

II. PETITIONERS' FAILURE TO TERMINATE FEDERAL FUNDING TO LOCAL GOVERNMENT AGENCIES THAT ALLEGEDLY DISCRIMINATE ON THE BASIS OF RACE AND GENDER DOES NOT GIVE RISE TO A CAUSE OF ACTION FOR DAMAGES UNDER THE FIFTH AMENDMENT

At its core, respondents' complaint attacks alleged unlawful discrimination in federally funded law enforcement programs (J.A. 26-41). Respondents do not contend, however, that petitioners practiced this discrimination. Instead, respondents argue that petitioners violated their rights under the Due Process Clause of the Fifth Amendment by failing to terminate funding to recipient state law enforcement agencies that petitioners allegedly knew discriminated on the basis of race and sex. Respondents ask that petitioners be found personally liable for compensatory and punitive damages because of their failure to terminate this funding.

The Due Process Clause of the Fifth Amendment unquestionably plays a substantial role in restricting the circumstances in which the federal government may legitimately employ race- or gender-based distinctions in allocating social or economic benefits. See, *e.g.*, *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975); *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954). And this Court has established that in some situations the Constitution affords victims a damages remedy against federal officials who purposefully discriminate. *Davis* v. *Passman*, 442 U.S. 228 (1979); cf. *Carlson* v. *Green*, 446 U.S. 14 (1980). Respondents, however, have not alleged that petitioners purposefully discriminated against them. On the contrary, the complaint asserts that any discrimination against respondents originated without petitioners' involvement and continued despite efforts by petitioners to eliminate it. The mere allegation that those efforts did not take the form and were not as efficacious as respondents would have liked does not state a claim on which damages liability under the Fifth Amendment may be predicated.[20]

A. The Complaint Does Not Allege and the Record Does Not Indicate That Petitioners Purposefully Discriminated

A showing that official government action has had a discriminatory effect or impact is not sufficient to establish a violation of the Due Process Clause of the Fifth Amendment. There must, in addition, be proof that the official action had an invidiously discriminatory purpose. *City of Memphis* v. *Greene*, No. 79-1176 (Apr. 20, 1981), slip op. 19; *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U.S. 256, 273-281 (1979); *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*,

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[20] This argument was raised by petitioners in the district court and in the supplemental brief and rehearing petition in the court of appeals. Neither court addressed it, however.

429 U.S. 252, 264-265 (1977); *Washington* v. *Davis*, 426 U.S. 229, 239-241 (1976). "'Discriminatory purpose' * * * implies more than intent as volition or intent as awareness of consequences. It implies that the decision-maker * * * selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Massachusetts* v. *Feeney*, *supra*, 442 U.S. at 279 (citation and footnote omitted). In the present case, the complaint does not allege and the record, including the uncontradicted affidavits, does not reveal the requisite purposeful discrimination.

According to respondents' own theory, the state and local law enforcement agencies that received LEAA funds, not petitioners, practiced illegal discrimination. The complaint alleges only that petitioners failed to terminate federal funding to agencies that they knew were discriminating. But there is no suggestion in the complaint or the record that petitioners controlled or otherwise directly influenced the employment practices of the recipient agencies. Moreover, respondents do not allege that petitioners required, encouraged, aided, or affirmatively approved the discriminatory behavior of the recipient agencies. Rather, the record shows, and respondents do not dispute, that petitioners took extensive actions short of formal enforcement proceedings to promote nondiscrimination by recipient agencies.

The complaint itself details petitioners' extensive efforts to secure compliance with the governing antidiscrimination laws. See, *e.g.*, Complaint ¶¶ 47, 76, 82, 89, 102 (J.A. 27, 34-36, 38, 41). These actions included compliance reviews, initial determinations that recipients were not in compliance, investigations of individual charges, and directives to recipient agencies demanding compliance with nondiscrimination requirements. The uncontradicted affidavits filed by petitioners in this case also demonstrate that petitioners made numerous attempts to assure that recipients of LEAA funds did not discriminate. See, *e.g.*,

Velde Affidavit ¶¶ 6-21 (J.A. 237-243). Respondents' essential contention, therefore, is that petitioners' attempts to obtain compliance were inadequate and that the failure to terminate federal funding had the effect of perpetuating local discrimination. Even if this doubtful assertion is adequately alleged (see pages 31-39, *infra*), it is insufficient to establish a claim for relief under the Fifth Amendment. The complaint and record facts, taken as true, do not establish that the LEAA funding was continued " 'because of,' [and] not merely 'in spite of,' its adverse effects upon [respondents]."[21] *Personnel Administrator of Massachusetts* v. *Feeney*, *supra*, 442 U.S. at 279. For this reason, respondents would not be entitled to relief even if they could prove their allegations.

B. The Complaint Fails To Allege Sufficient LEAA Involvement To Establish That Continuation Of Federal Funding Had The Effect Of Injuring Respondents

The complaint also fails to state a claim on which relief can be granted because it does not allege an adequate causal connection between petitioners' actions and respondents' injury. Respondents essentially claim that by failing to initiate fund termination proceedings against

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[21] The only suggestion in the 36-page complaint that petitioners' actions were improperly motivated appears not in the numbered paragraphs setting forth respondents' factual allegations and their supposed causes of action but rather in the concluding "Prayer for Relief." As part of their request for damages, respondents make the bald assertion that petitioners' failure to act was "malicious." Such a conclusory term, which is inconsistent with petitioners' undisputed actions and is not supported by any allegations of fact, should not be enough to require the Attorney General and his subordinates to endure a trial for damages. Cf. *Butz* v. *Economou*, *supra*, 438 U.S. at 507-508 ("Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive a motion to dismiss").

recipient agencies that discriminate, petitioners themselves became responsible for the discrimination and may be held liable in damages. But this Court's decisions establish that petitioners must be personally responsible or affirmatively involved in the allegedly unconstitutional behavior before they may be found liable for it. See *Martinez* v. *California*, 444 U.S. 277, 285 (1980); *Rizzo* v. *Goode*, 423 U.S. 362, 377 (1976).[22]

In order for liability to attach, the chain of causation from petitioners' involvement to respondents' injuries must be concrete and direct. See, *e.g.*, *Martinez* v. *California*, *supra*; *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976); *Rizzo* v. *Goode*, *supra*; *Warth* v. *Seldin*, 422 U.S. 490 (1976); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972). Respondents must show that they have "suffered some actual or threatened injury *as a result of* the putatively illegal conduct of the" petitioners. *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979). If the chain of causation is based on speculative inferences and the injury is a "remote consequence" of petitioners' action, the claim must be dismissed. Because respondents' injuries in this case cannot be "fairly traced" to any involvement by petitioners, and because it would be mere speculation to conclude that the termination of funding would have remedied the discrimination respondents allegedly have suffered, the complaint fails to state a claim for damages relief under the Fifth Amendment.

In *Martinez* v. *California*, *supra*, for example, a convicted felon committed a murder soon after his release from prison on parole. Although the parole officers' de-

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[22] Accord, *Maioranna* v. *MacDonald*, 596 F.2d 1072, 1077-1078 (1st Cir. 1979); *Kostka* v. *Hogg*, 560 F.2d 37, 40 (1st Cir. 1977); *Palmer* v. *Hall*, 517 F.2d 705, 708-709 (5th Cir. 1975); *Sostre* v. *McGinnis*, 442 F.2d 178, 189-190 (2d Cir. 1971) (en banc), cert. denied, 404 U.S. 1049, 405 U.S. 978 (1972); *Davis* v. *Casey*, 493 F. Supp. 117, 120 (D. Mass. 1980); *Simms* v. *Reiner*, 419 F. Supp. 468, 474-475 (N.D. Ill. 1976); *Richardson* v. *Snow*, 340 F. Supp. 1261, 1262-1263 (D. Md. 1972).

termination to release the felon was in some sense a cause of the decedent's death, this Court unanimously concluded that the murder was "too remote a consequence of the parole officers' action to hold them responsible" under the Due Process Clause of the Fourteenth Amendment (444 U.S. at 285). The parole officers did not have sufficient personal involvement in the crime that took the victim's life.[28]

Similarly, in *Rizzo* v. *Goode*, *supra*, a group of citizens of Philadelphia claimed that city police officers engaged in a "pervasive pattern of illegal and unconstitutional mistreatment" (423 U.S. at 366). The suit charged the Police Commissioner and the Mayor with conduct ranging from express authorization of this mistreatment to the "failure to act in a manner so as to assure that it would not recur in the future." *Id.* at 367. The suit did not name as defendants the group of police officers principally involved in the illegal incidents; it attempted only to hold the top administrative officials liable. *Ibid.* Emphasizing the district court's finding that the conduct of the Mayor and the Police Commissioner had played "no affirmative part" in the line officers' allegedly unconstitutional behavior, the Court reversed the grant of an injunction issued against those defendants. *Id.* at 377. The Court held that the Mayor and Police Commissioner were not responsible for the unconstitutional actions, even though their failure to change police disciplinary procedures allegedly meant that the unconstitutional behavior was likely to recur. *Id.* at 371. The Court simply found the causal connection between the asserted constitutional injury and the defendants' involvement too attenuated to support judicial intervention under 42 U.S.C. 1983. Accord, *Palmer* v. *Hall*, *supra*, 517 F.2d at 708-709 (Mayor's order to "shoot to kill" persons involved in violent crime

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[28] The Court contrasted the situation with *"Screws* v. *United States*, 325 U.S. 91, where local law enforcement officials themselves beat a citizen to death." *Martinez* v. *California*, *supra*, 444 U.S. at 285 n.19.

did not cause police officer's wrongful shooting of fleeing misdemeanant).

Simon v. *Eastern Kentucky Welfare Rights Organization, supra, Warth* v. *Seldin, supra,* and *Linda R.S.* v. *Richard D.,* 410 U.S. 614 (1973), although addressed to the closely related question of standing to sue, also support the conclusion that the alleged chain of causation in this case is too attenuated to withstand a motion to dismiss. In *Eastern Kentucky,* several indigents and organizations composed of indigents sued the Secretary of the Treasury and the Commissioner of Internal Revenue, claiming that a new IRS Revenue Ruling violated the Internal Revenue Code by allowing favorable tax treatment to a nonprofit hospital that offered no services other than emergency room care to indigents. This ruling, the complaint alleged, encouraged hospitals to deny services to indigents. 426 U.S. at 42. In dismissing the complaint, this Court stated (*id.* at 42-43):

> [I]t does not follow * * * that the denial of access to hospital services in fact results from petitioners' new Ruling, or that a court-ordered return by petitioners to their previous policy [which would not have permitted preferred tax status to the hospitals involved] would result in these respondents' receiving the hospital services they desire. It is purely speculative whether the denials of service specified in the complaint fairly can be traced to petitioners' "encouragement" or instead result from decisions made by the hospitals without regard to the tax implications.

See also *Warth* v. *Seldin, supra,* 422 U.S. at 503-508 (record devoid of necessary factual allegations from which a court could infer that, in the absence of defendants' restrictive zoning practices, plaintiffs' asserted injury probably would be remedied); *Linda R.S.* v. *Richard D., supra,* 410 U.S. at 618 (plaintiff's injury only speculatively traceable to challenged inaction by defendant prosecutor).

Here, it cannot be maintained that the employment discrimination allegedly practiced by recipient agencies "in fact" resulted from the continued LEAA funding—indeed, by respondents' own assertions the discrimination long predated the LEAA—or that the recipient agencies would necessarily have stopped discriminating if LEAA funding had been terminated.[24] Rather, even assuming that petitioners' initiation of fund termination proceedings would actually have resulted in the cutoff of funds, independent action by third parties (the recipient agencies) still would have been required before the injuries respondents allegedly sustained would have been remedied. In light of the limited contribution made by LEAA funds to the overall operation of local police departments, the recipient agencies might well have failed to remedy their allegedly discriminatory practices even if LEAA funds had been terminated. In 1974, for example, the LEAA grant to the Phiadelphia Police Department represented less than 1% of the Department's budget (see note 2, *supra*). When this fact is considered together with the Department's resistance to petitioners' other efforts to secure compliance with the statutory nondiscrimination provisions (see Complaint ¶ 47 (J.A. 27)), there is little likelihood that funding termination would have had the desired effect on the discriminatory behavior of that agency. As in *Martinez*, *Rizzo*, and *Eastern Kentucky*, respondents' injury is at most a "remote consequence" of petitioners' actions and "[i]t is purely speculative whether [the discrimination] specified in the complaint fairly can be traced to [petitioners' financial support] or instead result[ed] from decisions made by [the re-

[24] Respondents cannot successfully premise their constitutional cause of action on the fact that petitioners failed to halt funding to some local police departments that were unlawfully discriminating. The critical inquiry is whether the uninterrupted LEAA funding itself had the purpose and effect of discriminating against respondents. Respondents' failure to describe the way in which petitioners' alleged omissions caused an injury they otherwise would not have suffered is fatal to the claim for damages.

cipient agencies]." *Simon* v. *Eastern Kentucky Welfare Rights Organization, supra*, 426 U.S. at 42-43. Hence, respondents' complaint does not allege a connection between their injury and petitioners' actions sufficient to withstand a motion to dismiss and to force the former Attorney General and his subordinates to undergo the burden of a trial.

Our contention is further supported by analogy to this Court's "state action" decisions under the Fourteenth Amendment. See, *e.g.*, *Flagg Bros.* v. *Brooks*, 436 U.S. 149 (1978); *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974); *Gilmore* v. *City of Montgomery*, 417 U.S. 556 (1974); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972); *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961). These cases show that minor governmental supervision, regulation, or even conferral of benefits does not imbue private conduct with the character of governmental action and certainly does not automatically render a state or municipality or one of its agencies or officials responsible for the conduct of private parties.[25] In the absence of purposeful causation or affirmative encouragement, state involvement does not subject private parties to the strictures of the Fourteenth Amendment. See, *e.g.*, *Moose Lodge No. 107* v. *Irvis*, *supra*, 407 U.S. at 176-177 (state regulation of liquor licenses, though highly detailed, does not "foster or encourage racial discrimination" and therefore "does

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[25] In the "state action" cases, the issue was whether the state was sufficiently involved in a private actor's allegedly illegal conduct so that the plaintiff could invoke the protections of the Fourteenth Amendment against the private individual's action. The issue was not, as it is here, whether the state, or one or more of its officials, could be held liable for the illegal conduct of the private actor. The "state action" cases are nevertheless informative as illustrations of the principle that minimal governmental involvement in actions of third parties does not bring constitutional constraints into play.

not sufficiently implicate the State" in a licensee's discriminatory practices to make the latter "state action").

Even less so should the mere continuation of federal funding—funding that constitutes an insignificant percentage of a state or local agency's total annual budget—subject LEAA officials to personal liability for the transgressions of the grant recipient. "Grants of federal funds generally do not create a partnership or joint venture with the recipient, nor do they serve to convert the acts of the recipient from private acts to governmental acts absent extensive, detailed, and virtually day-to-day supervision." *Forsham* v. *Harris*, 445 U.S. 169, 180 (1980). See also *United States* v. *Orleans*, 425 U.S. 807, 818 (1976). Here, the recipient agency's allegedly discriminatory actions were not endorsed, approved, or induced by petitioners but in fact, according to respondents' own allegations, were undertaken and continued in direct contravention of petitioners' directives and compliance efforts. This argument would remain controlling even if the statutory provisions on which respondents rely, Sections 509 and 518(c) of the Act as amended in 1973, reposed substantially less discretion in the hands of the officials responsible for administering the LEAA grant program. Without some more direct allegation and showing that the asserted failure by petitioners to perform their statutory duty regarding fund termination caused respondents some actual constitutional injury (see note 26, *infra*) that otherwise would not have occurred, respondents would still fail to state a claim on which liability for damages could properly be based. Not every departure by a federal officer from a statutory command subjects him under the Constitution to liability to those persons who are dissatisfied with his performance. However serious may be the alleged dereliction of duty, damages may not be recovered under the Fifth Amendment unless a litigant alleges and proves a direct causal connection between the wrongful official omission and some discrete deprivation of constitutional rights that the litigant has suffered.

The First Circuit recently applied these principles in a context closely related to the present situation. In *Francis-Sobel* v. *University of Maine*, 597 F. 2d 15 (1st Cir.), cert. denied, 444 U.S. 949 (1979), the court of appeals affirmed the dismissal of a damages claim against an EEOC official for allegedly failing to handle properly the plaintiff's discrimination complaint against a state university. The court explained (597 F. 2d at 18):

> Nor do we think that even arbitrary and capricious denial of the investigative and conciliatory benefits the EEOC can provide to a charging party transgresses the Due Process Clause in a way that would support the implication of a damage remedy. Unlike *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 * * * (1971), this case involves the loss of alleged statutory rights to administrative assistance in the vindication of underlying, fundamental statutory and constitutional interests. The interests themselves have not been lost, only the help that Congress intended charging parties receive in vindicating those rights. We think that such statutory rights, if they be "liberty or property" at all within the meaning of the Due Process Clause, are so tangential to [plaintiffs' underlying rights] * * * that an implied right of action [under the Constitution] cannot and should not be found here. Indeed, were we to find that the right to EEOC assistance is protected by an implied right of action found in the Fifth Amendment, then every federal bureaucrat would be subject to judicial review of the most minute aspects of his responsibilities as they affect members of the public.

By contrast to this reasoning, the decision of the court of appeals now under review would subject federal officials who supervise federal funding programs to personal damages liability for the discriminatory acts of grantee state and local governments, even though the federal officials were not responsible for the discrimination and even though the victims of such discrimination have fully ade-

quate remedies against the recipients of federal funds. See *Owen* v. *City of Independence, Missouri*, 445 U.S. 622 (1980); *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974); 42 U.S.C. 1983, 2000e, 3766(c)(4)(A). Cf. *Parratt* v. *Taylor*, No. 79-1734 (May 18, 1981); *Carlson* v. *Green*, *supra*.[26] The Fifth Amendment does not authorize a constitutional cause of action for damages in these circumstances.

III. PETITIONERS ARE ENTITLED TO QUALIFIED IMMUNITY AS A MATTER OF LAW

As we have shown above, the judgment of the court of appeals should be reversed on the grounds of absolute immunity and respondents' failure to state a claim on which relief can be granted. Regardless of these contentions, however, petitioners should prevail in this case because they are entitled to qualified immunity as a matter of law. Government officials are entitled to qualified

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[26] We do not understand respondents to assert any statutory right to a damages recovery from petitioners. In any event, such a claim is plainly not available. Section 518 of the Act does not expressly provide respondents with a private cause of action against petitioners in their individual capacities. Whether the statute nonetheless implicitly creates a private cause of action is purely a question of congressional intent. *Universities Research Ass'n* v. *Coutu*, No. 78-1945 (Apr. 6, 1981); *Touche Ross & Co.* v. *Redington*, 442 U.S. 560 (1979). Nothing in the language or the legislative history of the Act suggests even remotely that Congress intended to permit private damage claims against the federal officials who administered the LEAA program. In fact, in 1976 Congress amended the Act to create a private remedy against LEAA funding recipients that discriminate illegally. 42 U.S.C. 3766(c)(4)(A). The amendment was unaccompanied by any indication that Congress intended to authorize similar private actions against LEAA officials who did not act swiftly or effectively enough to end discrimination by recipient agencies. Accordingly, no private cause of action against the officials who administered the LEAA statute is implicit in the Act. See, *e.g.*, *California* v. *Sierra Club*, No. 79-1252 (Apr. 28, 1981); *Universities Research Ass'n* v. *Coutu*, *supra*; *Touche Ross & Co.* v. *Redington*, *supra*.

immunity when they act in a reasonable, good-faith belief that their actions are lawful. *Butz* v. *Economou*, *supra*, 438 U.S. at 507; *Scheuer* v. *Rhodes*, 416 U.S. 232, 247-248 (1974). The pleadings and accompanying affidavits in the record demonstrate that petitioners sought to enforce the antidiscrimination provisions in the Act and that they could not possibly have known that their failure to initiate funding termination proceedings violated respondents' Fifth Amendment rights. Accordingly, petitioners are entitled to a summary disposition in their favor.

No decision of this Court or of any court of appeals has previously suggested that the mere failure to terminate federal funding gives rise to a cause of action for damages under the Due Process Clause. Indeed, in 1975, when petitioners' allegedly tortious conduct occurred, it was far from clear whether many of the alleged discriminatory practices of grant recipients even amounted to a violation of equal protection principles. For example, the use of height and weight requirements and written examinations by local police departments raised legal questions that at the time were rapidly developing and largely unsettled. See, *e.g.*, *Washington* v. *Davis*, *supra*; *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977). Because petitioners thus had no reason to believe that their actions were violating "clearly established" constitutional rights, and because a government official is not " 'charged with predicting the future course of constitutional law' " (*Wood* v. *Strickland*, 420 U.S. 308, 322 (1975), quoting *Pierson* v. *Ray*, *supra*, 386 U.S. at 557), respondents' claim for damages should have been dismissed. See, *e.g.*, *Butz* v. *Economou*, *supra*, 438 U.S. at 507-508; *Procunier* v. *Navarette*, 434 U.S. 555, 564-566 (1978); *Wood* v. *Strickland*, *supra*, 420 U.S. at 321-322. See also *Trapnell* v. *Riggsby*, 622 F.2d 290, 295-296 (7th Cir. 1980); *Douthit* v. *Jones*, 619 F.2d 527, 534 (5th Cir. 1980); *Atcherson* v. *Siebenmann*, 605 F.2d 1058, 1063-1067 (8th Cir. 1979).

In response to the statement in the petition (Pet. 21 n. 20) that nothing in the complaint or the record suggests that petitioners' failure to act was motivated by bad faith, respondents point (Br. in Opp. 8 n.9) to the single sentence in the complaint's "Prayer for Relief" in which they characterize petitioners' conduct as "willful and malicious." Such conclusory and unsupported name-calling, however, cannot substitute for factual allegations that, if true, would support a finding that petitioners acted without a reasonable, good-faith belief in the lawfulness of their conduct. Respondents also maintain (Br. in Opp. 12 n.13, 15 n.15) that petitioners violated Section 518(c) of the Act by relying on compliance methods other than funding termination and that this statutory violation is sufficient to support their constitutional damage claim. But, as we have already argued, petitioners' compliance efforts were not inconsistent with the Act as a matter of law. And, even if they were, this would not establish that petitioners knew that the failure to terminate funding to allegedly discriminating agencies violated the Act, much less that it violated respondents' *constitutional* rights. See also note 39, *supra*. Respondents simply have not made a single factual assertion that would tend to explain how petitioners conceivably could have known that their civil rights enforcement efforts deprived respondents of due process in violation of the Fifth Amendment.

Moreover, the uncontradicted affidavits filed by petitioners and the Statement of Reasons prepared by petitioner Velde (see page 27, *supra*), which outlines in detail the nature and extent of the LEAA efforts to obtain compliance with the Act's antidiscrimination provisions, negate any possibility that petitioners acted unreasonably or with the intent to deny respondents their constitutional rights. Petitioner Velde's Statement of Reasons describes the origins and distribution of the LEAA Equal Employment Opportunity Program Development Manual, the drafting of a Master Plan and State-

ment of Priorities for LEAA's compliance program, the convening of conferences on the employment of women and minorities in law enforcement jobs, and the creation of the position of Special Assistant to the Administrator to help coordinate LEAA compliance efforts. The Statement explains (J.A. 281-282; emphasis in original):

> In recognition of the practical limitations on investigating every possible violation by every recipient criminal justice agency, LEAA has continually increased its monitoring of the civil rights responsibilities of recipient agencies through training, technical assistance and programmatic requirements designed to educate, assist and require a self-evaluation by these agencies. The question is not *whether* to effect civil rights compliance, but *how* to *best* accomplish it.

The Statement of Reasons then describes the creation, organization, and staffing of the LEAA Office of Civil Rights Compliance. The Office was established in 1971 and its staff for fiscal year 1974 consisted of 12 professionals and three clerical workers. The number of professionals on the staff increased to 16 in fiscal year 1975. The Office was divided into a Complaints Division, a Compliance Review Division, and a Contract Compliance Division. The Statement of Reasons explains the operation of these divisions and provides statistical information concerning the office's activities during the fiscal years involved in respondents' complaint.

Petitioner Velde's report also includes a listing of significant LEAA grants and contracts designed to improve civil rights compliance capabilities (see J.A. 291-294). The Statement of Reasons stresses that "[t]he primary purpose of civil rights law is to establish equal opportunity, not to withhold Federal assistance" (J.A. 294). For that reason, the Statement announces (*ibid.*): "LEAA is firmly committed to the principle that the initial step in the resolution of civil rights compliance problems must be a serious attempt to achieve a voluntary settlement."

Finally, the Statement addresses respondents' contentions and explains the legal and practical problems with the immediate funding terminations that respondents demand (J.A. 296-302). The appendix to the Statement of Reasons contains a detailed description of the application of LEAA's antidiscrimination compliance policies in connection with several particular recipient agencies, including those mentioned in respondents' complaint.

Respondents have not disputed any of the factual representations made in the Statement of Reasons and its Appendix. Respondents apparently concede, and in any event the record establishes, that LEAA and petitioners made extensive efforts to enforce the Act's antidiscrimination provisions, both through attempting to obtain voluntary compliance and through litigation. In light of respondents' failure to allege any facts suggesting petitioners' bad faith, and in light of their further failure to deny that petitioners devoted substantial energies to civil rights enforcement, the only conclusion that can be supported by the record is that petitioners acted reasonably and in good faith in attempting enforcement measures before considering whether to resort to funding termination. See *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 44.

In *Butz* v. *Economou*, *supra*, this Court expressed confidence that "[i]nsubstantial lawsuits [against federal officials] can be quickly terminated by federal courts alert to the possibilities of artful pleading" (438 U.S. at 507). In addition, the Court reiterated the view, stated earlier in *Scheuer* v. *Rhodes*, *supra*, that "damages suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on the defense of immunity" (438 U.S. at 508). This case tests the effectiveness of those assurances. If ever a constitutional tort suit against federal officials deserved to be resolved summarily, this is the one—yet it has now been pending for more than five years. Respondents' extrava-

gant charges should not be permitted to force petitioners, including the former Attorney General, to undergo the expense and burden of a trial. Even if petitioners ultimately prevail, the prospect of defending such lawsuits in the future can hardly fail to "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." *Gregoire* v. *Biddle*, 177 F.2d 579, 581 (2d Cir. 1949). See *Hanrahan* v. *Hampton*, 446 U.S. 754, 765 (1980) (Powell, J., dissenting from the denial of certiorari). The complaint and record leave no doubt that petitioners acted reasonably and in good faith. At a minimum, therefore, they are entitled to qualified immunity as a matter of law.

CONCLUSION

The judgment of the court of appeals should be reversed insofar as it reinstates respondents' claim for damages and remands for further proceedings on that claim.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD W. VELDE, *et al.*,
Petitioners,
v.
NATIONAL BLACK POLICE ASSOCIATION, INC., *et al.*

On Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Are the administrators of federal grant-in-aid programs, who must insure that funds are expended by their grantees in accordance with applicable federal restrictions, entitled to an absolute immunity from damages liability for their allegedly willful, unconstitutional refusal to enforce federal civil rights requirements?

2. Do allegations that LEAA program administrators willfully and maliciously refused to carry out any of their civil rights enforcement obligations and continued to expend federal funds to support the admittedly discriminatory practices of LEAA grantees state a cause of action for damages under the Fifth Amendment?

3. Should the district court have granted petitioners' motion for summary judgment, insulating them from any liability to respondents on the theory that petitioners acted "in good faith" albeit unconstitutionally, where the only admissible evidence submitted by the government contained no assertions of "good faith," and where respondents' submissions—despite the denial of any discovery by the district court—would have supported a finding on this record that petitioners deliberately violated respondents' constitutional rights?

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IN THE

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OCTOBER TERM, 1980

No. 80-1074

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Petitioners,

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., *et al.*

On Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS

STATEMENT

Respondents accept most of the petitioners' description of the factual circumstances which shape this case, subject to the additions and clarifications below concerning (1) petitioners' statutory civil rights enforcement obligations, (2) the scope of respondents' complaint, and (3) the posture of this case in the trial court.

1. Petitioners' description of their statutory civil rights enforcement responsibilities, Pet. Br. 4-5, fails to note that § 518(c)(2) was added to the Omnibus Crime Control and Safe Streets Act in 1973 (through an amendment introduced by Rep. Barbara Jordan) because of the fact that LEAA theretofore had "had no civil rights

enforcement program." [1] In fact, "[i]t took over 2 years . . . [after its establishment in 1968] before LEAA recognized its responsibilities to prevent racial discrimination in the use of its funds." [2]

Even after LEAA formally recognized in 1970 that it had a civil rights enforcement "obligation [which] stems from the Fifth and Fourteenth Amendments and [which] is reflected in the policy underlying Title VI of the Civil Rights Act of 1964," [3] its "inaction of the previous two years" continued to be defended at the highest levels of its parent agency, the United States Department of Justice,[4] and LEAA officials continued to refuse "to deal

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[1] 119 CONG. REC. 20071 (June 18, 1973) (Rep. Jordan). The Crime Control Act of 1973, Pub. L. No. 93-83, § 2 (August 6, 1973), 87 Stat. 197, added Rep. Jordan's amendment as § 518(c)(2) of the Act. *See* 42 U.S.C. § 3766(c)(2) (Supp. V 1975). The complete text of § 518(c)(2) as enacted in 1973 is set forth at Pet. Br. 2-3.

Relevant portions of the legislative history pertaining to the civil rights enforcement provisions of the Crime Control Act of 1973 and of the Crime Control Act of 1976 are set forth in the appendix to this Brief, at 1a-24a *infra*.

[2] 119 CONG. REC. 22059 (June 28, 1973) (Sen. Bayh).

[3] *LEAA Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 93rd Cong., 1st Sess. 621 (1973) (Rep. Hawkins).

[4] As Representative Hawkins explained, *id.* at 621-22:

> In July 1970, the Office of Legal Counsel of the Department of Justice (then headed by William Rehnquist) issued a legal position letter attempting to justify the inaction of the previous two years by declaring that Title VI of the Civil Rights Act of 1964 was not applicable to employment practices of LEAA grantees and subgrantees. This position received scathing criticism from civil rights groups and from the Civil Rights Commission. On October 23, 1970, an additional opin-

with complaints in an expeditious manner," "performed [no] pre-award [civil rights compliance] reviews," and adopted "regulations indicat[ing] a strong preference that a judicial proceeding rather than the more logical one of an administrative proceeding be used [to secure compliance]." [5]

In enacting § 518(c)(2) in 1973, Congress not only sought to "reverse LEAA's traditional reliance on court proceedings to correct discrimination, rather than undertaking administrative enforcement of civil rights requirements," [6] but also "imposed upon LEAA the most stringent statutory civil rights mandate" governing any federal agency.[7]

2. Respondents filed this lawsuit because, according to the allegations of the complaint, petitioners had utterly failed to carry out their constitutional and statutory civil rights enforcement obligations and had knowingly continued to distribute millions of dollars in federal

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ion, from the Department of Justice's Office of Title VI, addressed to Jerris Leonard in his capacity as Assistant Attorney General for the Civil Rights Division, argued forcefully—and apparently convincingly—that LEAA programs were indeed covered by Title VI. The LEAA acquiesced and promulgated regulations implementing the law.

[5] *Id.* at 622 (Rep. Hawkins).

[6] 119 CONG. REC. 20071 (June 18, 1973) (Rep. Jordan). As Rep. Jordan explained her amendment, which became § 518(c)(2), *id.*:

> The effect of my amendment . . . is to require LEAA to first use the same enforcement procedure which applies to any other violation of LEAA regulations or statutes. That procedure of notification, hearings, and negotiations is spelled out in Section 509, which provides the ultimate sanction of funding cutoff if compliance is not obtained.

[7] *LEAA Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary*, 94th Cong., 2d Sess. 606 (1976) (Rep. Rangel).

grants to state and local police departments practicing discrimination.

Respondents' lawsuit sought declaratory and injunctive relief (in the nature of mandamus) to compel petitioners and their successors in office to enforce the law, and damages on account of petitioners' prior conduct. Respondents' complaint did not merely attack a few unrelated failures by petitioners to investigate individual complaints or to take administrative enforcement actions when investigations established civil rights noncompliance; instead, respondents alleged a consistent policy and practice that bore no relation to individualized decisionmaking or to the exercise of discretion on a case-by-case basis. For example, petitioners were charged with:

—systematically responding not at all or ineffectively to all administrative complaints of discrimination filed by aggrieved individuals, and taking no effective enforcement action against any grantees found to be in civil rights noncompliance, J.A. 21, 26-28, 30-32, 35-36, 40-41;

—maintaining "a policy of not conducting any pre-award [civil rights] compliance reviews of law enforcement agencies which applied for LEAA funding," undertaking very few post-award compliance reviews, and taking no administrative action when discrimination was found, J.A. 20, 34-35, 36-38;

—refusing to take action against grantees which had been adjudicated to be discriminatory or which had been sued because of alleged discrimination, J.A. 18-19, 28-30, 32-34, 38-40;

—refusing to take action against, but continuing to fund, grantee law enforcement agencies which petitioners knew to maintain *prima facie* discriminatory policies and practices, J.A. 19-20, 22-41;

—asserting, contrary to LEAA's own published regulations, "that the utilization of women in police service is a 'novel question' " and refusing to "terminate LEAA funding to any law enforcement agency which denies sworn police officer employment to women," J.A. 21, 26-28, 30-32, 34-38, 40-41;

—never having conducted an administrative hearing that could lead to terminating, and never having "denied or terminated LEAA funding . . . on the grounds that the law enforcement agency was engaged in race or sex discrimination or was otherwise in civil rights noncompliance," J.A. 21.

Petitioners' refusals to respond effectively to the administrative complaints and requests of the individual plaintiffs were alleged, in detail, as examples of these broad policies and practices. Petitioners' actions were alleged to be unconstitutional, in excess of their authority, willful, and malicious, J.A. 41-44.[8]

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[8] A report issued by the Civil Rights Commission two months after this lawsuit was filed closely paralleled the allegations of the complaint. U.S. Comm'n on Civil Rights, THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—1974 (Vol. VI, *To Extend Federal Financial Assistance*) 271-393, 773-77 (1975).

The Commission found, for example, that "LEAA was slow to investigate its complaints," a fact due in part "to LEAA's reluctance to take enforcement action when the recipients are resistant to coming into compliance voluntarily." *Id.* at 374-75, *reprinted in* C.A. App. 599-600. "LEAA rarely conducts compliance reviews," *id.* at 355, C.A. App. 580, and when it did, the agency often found that discrimination had occurred but took no action: "Despite the apparent frequency, diversity, and severity of civil rights problems uncovered by LEAA in its compliance reviews, none of these reviews resulted in LEAA's finding recipients to be in noncompliance." *Id.* at 364, C.A. App. 589. Although 26 of the 50 largest police departments in the nation had been sued for alleged race or sex discrimination, "LEAA had not examined these cases to ascertain if they show *prima facie* civil rights violations." *Id.* at 380, C.A. App. 605. The agency's record

Respondents' charges were virtually duplicated by the findings of subsequent congressional investigation. Although "LEAA has both a constitutional and a statutory responsibility to enforce [its] civil rights law," [9] the House Judiciary Committee concluded in 1976 that "[t]he response of LEAA to the 1973 civil rights amendments has been less than minimal." [10] The "attempt by Congress [in 1973] to make clear to LEAA that it is to utilize and give preference to its administrative enforcement powers rather than its traditional reliance on judicial remedies has been *blatantly disregarded.*" [11] The 1973 amendment had "not been enforced," [12] and "was

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was especially poor with regard to sex discrimination, inasmuch as "LEAA has indicated that its reason for not enforcing equal employment opportunity of women is that it believes sex may be a valid criterion for selecting persons for police work." *Id.* at 366, C.A. App. 591. Finally, the report observed, "LEAA staff states that the agency has never terminated funding because of a civil rights violation," *id.* at 383, C.A. App. 607, and "LEAA continues to fund jurisdictions in which there is *prima facie* evidence of civil rights violations." *Id.* at 378, 777, C.A. App. 603, 623.

The Commission's report was filed with the district court as an exhibit to respondents' motion for preliminary injunction, and relevant portions of the report were reprinted in the Appendix filed in the court of appeals, C.A. App. 481-623.

[9] *LEAA Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary*, 94th Cong., 2d Sess. 447 (1976) (Rep. Jordan).

[10] H.R. REP. No. 94-1155, 94th Cong., 2d Sess. 11 (1976). The Judiciary Committee also observed, *id.*: "LEAA has never terminated payment of funds to any recipient because of a civil rights violation. Despite positive findings of discrimination by courts and administrative agencies, LEAA has continued to fund violators of the Act."

[11] *LEAA Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary*, 94th Cong., 2d Sess. 606 (1976) (Rep. Rangel) (emphasis added).

[12] *Id.* at 442 (Rep. Jordan).

ignored," [13] "in effect making the federal government a party to the discrimination which pervades our criminal justice system. Our taxpayers' dollars cannot be funneled in this discriminatory manner." [14]

3. The district court did not reach the merits of respondents' complaint. It dismissed the request for injunctive relief as moot and held that petitioners as federal officials were protected from any damage claims by an absolute immunity. Cert. Pet. App. 28a-29a. Both of these rulings were reversed by the court of appeals. Cert. Pet. App. 1a-23a. Petitioners do not seek review here of the court of appeals' reinstatement of the injunctive claims, Pet. Br. 6 n.8, but they do argue that the court of appeals incorrectly denied them absolute immunity from damages liability, Pet. Br. 14-28. The

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[13] *Id.* at 443 (Rep. Conyers).

[14] *Id.* at 606 (Rep. Rangel). The legislative response to LEAA's record of nonenforcement was the enactment in 1976 of yet another § 518(c)(2) amendment, again authored by Rep. Jordan, which added additional triggers to the already existing mandatory fund termination requirements governing LEAA officials. Crime Control Act of 1976, Pub. L. No. 94-503, § 122 (October 15, 1976), 90 Stat. 2404, 2418; *see* 42 U.S.C. § 3766(c) (1976).

Although Representative Jordan remarked at the time that "something" had to be done "about civil rights enforcement in the Law Enforcement Assistance Administration," *LEAA Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary*, 94th Cong., 2d Sess. 442 (1976), there was of course no guarantee that the response of LEAA officials would be any different from that which greeted the 1973 amendment. As Representative Conyers observed, *id.* at 443:

> We all enacted a law; everyone understood what it meant; it went on the books; the President signed it; and then it was ignored.
>
> Now, some of us—yourself included—are getting a little tired of this. We can pass civil rights laws year in and year out, and the agency charged with the enforcement ends up being the prime noncompliant.

petitioners also make two arguments here which were not addressed by either court below: that respondents failed to allege or prove the requisite elements of a constitutional cause of action, and that even if they had only a qualified immunity petitioners were on this record unquestionably entitled to summary judgment in their favor. Pet. Br. 28-44. Because of these arguments, it is important to describe accurately the posture of this case in the trial court.

a. Respondents were allowed no discovery. Ten days after the case was commenced, respondents filed four sets of discovery demands upon petitioners, and later noticed a deposition of one of the petitioners. J.A. 1-3, 341-45.[15] The government obtained an order staying all discovery which the trial court thereafter refused to vacate. *Id.*

b. Nevertheless, in January, 1976 respondents filed affidavits and documentary evidence, obtained prior to the commencement of this litigation through requests made to LEAA under the Freedom of Information Act, supporting their complaint and motion for preliminary injunction. J.A. 2, 46-233.

c. When the government three weeks later moved to dismiss, or alternatively for summary judgment, J.A. 3, 234-35, it filed only cursory affidavits in which the petitioners stated that they had acted as administrators within the scope of their official duties, and in which they made no assertions that they had acted in good faith, J.A. 236-64. The government also submitted an unsworn, uncertified, discursive document entitled "Statement of Reasons and Appendix," [16] but it simply is wrong to say,

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[15] *See* note 47 at 46 *infra*.

[16] Part of this document is reprinted in the Joint Appendix before this Court. J.A. 265-303. The entire document appears in the Appendix filed in the Court of Appeals. C.A. App. 624-720.

[Footnote continued on page 9]

as the government does, that the "Statement" was "incorporated by reference in [petitioner] Velde's affidavit," Pet. Br. 27. The Velde affidavit refers to, but neither incorporates the document nor attests to its accuracy. *See, e.g.*, J.A. 243.[17]

d. In opposition to the government's motion, respondents relied not only upon the materials submitted with their motion for preliminary injunction but also filed additional affidavits and documentary evidence. J.A. 340-494. They also submitted a 38-page statement of genuinely disputed issues.[18] It is thus untrue to say that "respondents have not disputed any of the factual representations made in the Statement of Reasons and its Appendix," Pet. Br. 43, and it is also incorrect for the government to characterize its summary judgment materials as "uncontradicted" or "undisputed," and to refer

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[16] [Continued]

In addition to these documents and to petitioners' affidavits, the government also submitted a four-paragraph, one-and-one-half-page statement of material facts, which stated no facts at all. C.A. App. 188-89.

[17] Petitioner Velde could not have done so. *See* note 48 at 47 *infra*.

[18] The statement of genuine issues filed by respondents, J.A. 309-39, points out that the government's submissions were inadequate to establish the policies which petitioners actually followed or the motivations for their actions or inactions, *see, e.g.*, J.A. 315-18. And the affidavits of the respondents and their counsel, *see* J.A. 51-233, 346-494, were more than adequate to call into question the government's assertion that "petitioners made extensive efforts to enforce the Act's antidiscrimination provisions . . . [and] the only conclusion that can be supported by the record is that petitioners acted reasonably and in good faith in attempting enforcement measures before considering whether to resort to funding termination," Pet. Br. 43. Finally, respondents reminded the district court that its stay of all discovery prevented them from submitting additional "sworn, admissible evidence in opposition" to the assertions of the government. *See* J.A. 340-42.

to the record as an "uncontradicted record," Pet. Br. 11, 13, 25.

SUMMARY OF ARGUMENT

I

In *Butz v. Economou*, 438 U.S. 478 (1978), this Court held that federal officials, like their state counterparts, are entitled only to a qualified, "good faith" immunity from damages liability for misconduct while in office. The Court recognized a very few, narrow exceptions to this general rule for, *inter alia*, those officials who are akin to prosecutors because they have "broad discretion in deciding whether a [civil penalty] proceeding should be brought and what sanctions should be sought," *id.* at 515. *Butz* does not support the government's claim of absolute immunity here.

A. The *Butz* exception is inapplicable to this case because the misconduct alleged by the respondents extends far beyond any role which petitioners might have played in connection with adjudicatory administrative proceedings (had there been any). Petitioners were charged with an across-the-board refusal to carry out any of their constitutional and statutory civil rights enforcement obligations. The exception cannot be stretched to cover all of petitioners' alleged misconduct, on the premise that it was ultimately connected to petitioners' failure to conduct administrative proceedings, without swallowing up the *Butz* holding.

B. Even if this case concerned only petitioners' refusal to initiate fund termination proceedings, the exception in *Butz* still would not apply because petitioners had no prosecutorial discretion.

1. Congress in the Crime Control Act mandated the use of this enforcement tool against grantees not in compliance with civil rights requirements—using language quite different from that in other statutes such

as Title VI of the Civil Rights Act of 1964. Hence petitioners lacked "broad discretion in deciding whether a proceeding should be brought." 438 U.S. at 515. And they had no discretion to decide "what sanctions should be sought," *id.*, since the statute provides only for the termination of "federal payments." This mandated sanction also is entirely unlike the range of civil penalties (such as license revocation, in *Butz*) available to Executive Branch officials whom this Court has recognized as "prosecutors."

2. The record here also bars the government's claim of prosecutorial immunity. The evidence establishes that petitioners deprived themselves of any discretion by maintaining and rigidly following a policy against ever initiating fund termination proceedings. Significantly, nowhere in their summary judgment affidavits did petitioners describe themselves as exercising prosecutorial functions.

C. Even if petitioners were to be regarded as prosecutors, it would be inappropriate in this case for the Court to accord them absolute immunity from liability for their allegedly deliberate, unconstitutional *in*action. The adversarial checks or other safeguards on prosecutorial misconduct upon which the Court relied in *Butz* are absent when officials are alleged to have willfully failed to take any action at all. Indeed, the policy of encouraging executive actions and decisionmaking which underlies all immunities—absolute or qualified, *see Scheuer v. Rhodes*, 416 U.S. 232, 242 (1974)—is inapplicable in this situation.

II

The allegations of respondents' complaint are more than sufficient to state a *Bivens* cause of action under the Fifth Amendment, *see Butz v. Economou*, *supra*, to remedy violations of a government agency's "constitutional obligation . . . to steer clear . . . of giving signifi-

cant aid to institutions that practice racial or other invidious discrimination," *Norwood v. Harrison*, 413 U.S. 455, 467 (1973).

A. Not only did respondents extensively document their allegations that petitioners funded grantees which they knew to be discriminatory, but respondents also specifically charged petitioners with "willful and malicious" refusals to carry out their civil rights enforcement obligations, in violation of the principle applied in *Norwood* and similar cases. (In its argument on this point, the government curiously does not cite *Bivens*, *Butz*, or *Norwood*.)

B. Since these allegations concerned the behavior and constitutional obligations of *petitioners*—and not the discriminatory practices of their grantees—any uncertainty about how those grantees might have responded had petitioners undertaken any civil rights enforcement efforts does not affect respondents' cause of action against *petitioners*. As the Chief Justice observed in *Norwood v. Harrison*, *supra*, 413 U.S. at 465-66: "We do not agree with [the government's] analysis of the legal consequence of this uncertainty, for the Constitution does not permit [government] to aid discrimination even when there is no precise causal connection between [government] financial aid to a [discriminator] and the continued well-being of that [discriminator]."

C. Even if the government's arguments are viewed as questioning respondents' Article III standing, they are without merit, both for the reasons stated above and because the allegations of the complaint were ample to survive a motion to dismiss, as Judge Tamm, partially dissenting below, recognized.

III

The government's final submission—that this Court should perform the functions of a trial court by ruling on contested factual issues decided by neither court be-

low, and by holding that petitioners on this record are entitled to qualified immunity as a matter of law—mistakes the role of this Court, misinterprets the law of official immunity, and misconstrues the record in this case.

According to the teaching of cases such as *Scheuer v. Rhodes, supra,* and *Wood v. Strickland,* 420 U.S. 308 (1975), cited approvingly in *Butz v. Economou, supra,* a determination of entitlement to qualified immunity requires an exploration into the facts, circumstances, and motivations surrounding the actions or inactions of the officials charged with constitutional violations. The trier of fact must determine whether the officials behaved maliciously, or in a manner which they knew (or should have known) would violate constitutional rights. As the government itself pointed out in its Brief in *Butz,* these issues are not ordinarily susceptible of determination on the basis of affidavits which might be filed in connection with a summary judgment motion; testimony and cross-examination are necessary.

Summary judgment for petitioners would have been particularly inappropriate in this case, since the government's motion was inadequately supported (for example, petitioners nowhere claimed in their affidavits that they had acted in good faith), since respondents were denied any discovery by a protective order obtained by petitioners, and since respondents' own affidavits and documentary material submitted in opposition to the government's motion amply demonstrated the existence of genuine fact issues. *See* F.R. Civ. P. 56; *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 157 (1970).

ARGUMENT

I. Administrators Of Grant Programs, Whose Responsibilities Include The Enforcement Of Federal Restrictions Upon The Use Of Funds By Grantees, Are Not Prosecutors Protected By An Absolute Immunity From Damages Liability For Their Unconstitutional Actions

In *Butz v. Economou, supra*, 438 U.S. at 507, this Court applied the "*Scheuer* principle of only qualified immunity for constitutional violations . . . [to hold f]ederal officials liable . . . [for damages if they] discharge their duties in a way that is known to them to violate the United States Constitution or in a manner that they should know transgresses a clearly established constitutional rule." In reaching this conclusion, the Court rejected the government's argument

> that all of the federal officials sued in this case are absolutely immune from any liability for damages even if in the course of enforcing the relevant statutes they infringed respondent's constitutional rights and even if the violation was knowing and deliberate.

Id. at 485. Undeterred, the United States, on behalf of the petitioners here, resurrects its *Butz* arguments in an attempt to expand this Court's narrow exception for *prosecutors*, *see id.* at 509-11, 515-17, so as to swallow up the ruling in *Butz*. The government seeks to accomplish this by renaming all of the administrators within LEAA's hierarchy who had any connection with its civil rights enforcement activities as "prosecutors."

The government's immunity claim must be rebuffed. Petitioners here were charged not just with refusing to initiate administrative proceedings but with an across-the-board refusal to perform any of their constitutional and statutory civil rights enforcement obligations. Even if this case concerned only the failure to initiate adminis-

trative fund termination proceedings, petitioners still could not be clothed with an absolute prosecutorial immunity because the Crime Control Act allowed them no discretion once a grantee was determined to be out of compliance, and because the statute in any event does not provide for the imposition of a civil penalty against grantees. Further, the record in this case established that petitioners exercised no discretion but uniformly followed a policy against initiating administrative proceedings, and in their own affidavits, petitioners nowhere described their functions as prosecutorial. Finally, the Court should not allow the government's claim here because the justifications for absolute immunity—official acts subject to adversarial checks or similar safeguards against prosecutorial misconduct—are not present when federal officers refuse to act at all.

A. Contrary to petitioners' characterization of this case, *see* Pet. Br. 16-17, respondents did not challenge only petitioners' refusal to initiate administrative fund termination proceedings upon finding civil rights noncompliance. Instead, as is pointed out at 3-5, *supra*, respondents claimed that they, and the class they seek to represent, had been harmed by petitioners' longstanding and consistent refusal to carry out *any* of their constitutional and statutory civil rights enforcement obligations, J.A. 18-41. In other words, the foundation of this action is quite different in degree from that in *Butz*. This lawsuit was not brought by a single disgruntled corporate official complaining that he had been unfairly targeted and thereafter penalized in an individual administrative enforcement proceeding. And, it involves much more than executive decisionmaking about one or even numerous administrative proceedings, *see* Pet. Br. 25. Respondents here charged petitioners with a wholesale refusal to exercise *any* of the meaningful enforcement tools available to them, resulting in continued unconstitutional government support for discriminatory

practices. As Justice White observed in his opinion for the Court in *Butz*, 438 U.S. at 506, "[e]xtensive Government operations offer opportunities for unconstitutional action on a massive scale. In situations of abuse, an action for damages against the responsible official[s] can be an important means of vindicating constitutional guarantees." This is such a case.

For petitioners to argue that all of their inactions and refusals to act were carried out under the guise of prosecutorial discretion is to say that the duty of all Executive Branch officials, to take care that the laws shall be faithfully executed, is a nullity. It also is to say (quite apart from Art. II § 3 of the Constitution, from the limitations imposed upon federal officials by the Fifth Amendment, and from the specific limitations imposed upon petitioners by Congress' enactment of § 518 (c) (2) of the Crime Control Act) that this Court's decision in *Butz*—holding that federal officials in general are not protected from liability by an absolute immunity—actually applies to no federal officials. All officials are prosecutors, in the government's submission. Pet. Br. 14-28. Even if there were any merit to the government's arguments with respect to LEAA's policy and practice of never initiating fund termination proceedings, those contentions clearly fail of application so broad as to shield all LEAA officials from liability for all of their unconstitutional actions.

B. Even if this case were limited only to petitioners' regulatory policy and practice of never initiating administrative fund termination proceedings, petitioners here still could not, on this record, avail themselves of the absolute immunity allowed by this Court in *Butz* to the federal officials in that case who could demonstrate on remand that they exercised prosecutorial functions.[19]

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[19] We recognize that in *Butz*, this Court itself gave absolute immunity to three of the twelve federal officials involved: the

In *Butz*, because of the impartiality built into, and the opportunity for review of, the administrative proceedings, this Court recognized that an agency official's "decision to initiate" administrative proceedings in which a civil penalty may be imposed upon an individual or corporation "is very much like the prosecutor's decision to initiate or move forward with a criminal prosecution," and that such an official accordingly *may* have an absolute immunity with regard to that decision. *Id.* at 515. As the Court emphasized, "[a]n agency official, like a prosecutor, *may* have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought." *Id.* (emphasis added). Petitioners here meet none of these criteria.

1. Under their governing statute, § 518(c)(2) of the Crime Control Act, *see* Pet. Br. 2-3, petitioners enjoyed no discretion once they determined that a grantee was not in compliance with the nondiscrimination requirement in § 518(c)(1) of the Act. Following that determination, petitioners were required by § 518(c)(2) to initiate fund termination proceedings by requesting the appropriate chief executive to secure compliance, and, that failing, to terminate "further payments" under § 509 of the Act. Concurrent with, *but not before* these steps, petitioners also were authorized to refer the matter to the Justice Department for it to decide whether to initiate litigation.[20]

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prosecuting attorney who was responsible for presenting the government's case at the administrative hearing, the Chief Hearing Examiner who was responsible for hearing and deciding the case, and the Judicial Officer who was responsible for reviewing the ruling of the Chief Hearing Examiner. *Butz v. Economou, supra*, 438 U.S. at 508-18. Petitioners here do not purport to claim that they or anyone else within LEAA performed these functions.

[20] The mandatory nature of the requirement in § 518(c)(2) that administrative fund termination proceedings be invoked either prior to or concurrently with other steps (such as referral to the

a. This statutory scheme led the court of appeals below to conclude that petitioners "have virtually no dis-

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Justice Department for the possible filing of a civil action) is *not*—contrary to the government's assertion, Pet. Br. 18 n.14, 19, 22—at all "typical" of the discretionary options under Title VI and other civil rights enforcement provisions. The significant difference between § 518(c)(2), *see* Pet. Br. 2-3, and the other statutory provisions is illuminated by the comparison suggested by the government at Pet. Br. 18 n.14.

Title VI of the 1964 Civil Rights Act provides, at 42 U.S.C. § 2000d-1 (1976) (emphasis added):

> Compliance with any requirement adopted pursuant to this section *may* be effected (1) by the termination of or refusal to grant or to continue assistance . . . *or* (2) by any other means authorized by law.

The Housing and Community Development Act of 1974 contains two relevant sections. 42 U.S.C. § 5309(b) (1976) states (emphasis added):

> Whenever the Secretary determines that a State or unit . . . has failed to comply . . . the Secretary *is authorized* to (1) refer the matter to the Attorney General . . . ; (2) exercise the powers and functions provided by Title VI . . . ; (3) exercise the powers and functions provided for in section 111(a) of this Act; *or* (4) take such other action as may be provided by law.

42 U.S.C. § 5311 (1976), § 111 of the Act, provides (emphasis added):

> (a) If the Secretary finds . . . that a recipient of assistance . . . has failed to comply . . . the Secretary . . . shall—(1) terminate payments . . . , *or* (2) reduce payments . . . , *or* (3) limit the availability of payments . . . .
>
> (b)(1) In lieu of, or in addition to, any action authorized by subsection (a), the Secretary *may* . . . refer the matter to the Attorney General . . . .

The Urban Mass Transit Act, 49 U.S.C. § 1615(a)(3)(B) (1976) provides (emphasis added):

[Footnote continued on page 19]

cretion under the relevant statute in deciding whether to terminate LEAA funding of discriminatory recipients," Cert. Pet. App. 6a; and that since "[t]he purpose of shielding discretionary prosecutorial decisions from fears of civil liability has no place where, as here, agency

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[20] [Continued]

> If . . . such person fails or refuses to comply . . . the Secretary shall—(i) direct that no further Federal financial assistance . . . be provided . . . ; (ii) refer the matter to the Attorney General . . . ; (iii) exercise the powers and functions provided by Title VI . . . ; *or* (iv) take such other actions as may be provided by law.

Finally, as originally enacted, the Comprehensive Employment and Training Act of 1973 stated, at 29 U.S.C. § 818(d) (1976) (emphasis added):

> Whenever the Secretary determines . . . that any prime sponsor . . . is—(1) maintaining a pattern or practice of discrimination . . . the Secretary . . . *to the extent necessary and appropriate* shall not make any further payments . . . .

Likewise, 29 U.S.C. § 991(b) (1976) provided, until 1978, that (emphasis added):

> Whenever the Secretary determines that a prime sponsor . . . has failed to comply . . . the Secretary, in addition to exercising the powers and functions provided for the termination of financial assistance under this Act, *is authorized* (1) to refer the matter to the Attorney General . . . ; (2) to exercise the powers and functions provided by Title VI . . . ; *or* (3) to take such other action as may be provided by law.

The statutory language in each of these instances is markedly different from the mandatory phrasing of the Crime Control Act. *See* Pet. Br. 2-3. In light of the government's broad statements about similarities, however, it is interesting to note that in 1978 Congress amended the CETA statute in a manner similar to its earlier amendment of the Crime Control Act, so as to provide for mandatory fund termination. *See* 29 U.S.C. § 816(c)(1) (Supp. II 1978); *compare id.* at § 816(c)(2).

officials lack discretion," *id.*, these officials accordingly cannot claim an absolute immunity.[21]

This view of § 518(c)(2) is entirely supported by the law's legislative history. Mandatory fund termination, in fact, was the express purpose of § 518(c)(2). Rep. Jordan, the author of the amendment which became § 518(c)(2), quite clearly described both its purpose and its intended effect:

> The effect of my amendment . . . is to require LEAA to first use the same enforcement procedure which applies to any other violation of LEAA regulations or statutes. That procedure of notification, hearings, and negotiations is spelled out in Section 509, which provides the ultimate sanction of funding cutoff if compliance is not obtained.
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> * * * *
>
> This amendment was necessary to reverse LEAA's traditional reliance on court proceedings to correct discrimination, rather than undertaking administrative enforcement of civil rights requirements.[22]

Although the government makes no effort to harmonize its peculiar view of the legislative history, *see* Pet. Br. 22-23 n.19, with the statements of Rep. Jordan, it nonetheless asserts that § 518(c)(2) and its legislative history "do not negate the proposition that petitioners, possessed *broad discretion in their administration of the Act's antidiscrimination provision.*" Pet. Br. 23 n.19 (emphasis added). This merely underscores the breadth of the absolute immunity claim which the government is making in this case—not limited, in accordance with

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[21] The court of appeals, it should be pointed out, has not at all abandoned the concern for protecting the exercise of *true* prosecutorial discretion which this Court expressed in *Imbler v. Pachtman*, 424 U.S. 409 (1976) and *Butz v. Economou, supra. See, e.g., Dellums v. Powell*, 50 U.S.L.W. 2101 (D.C. Cir., July 24, 1981).

[22] 119 CONG. REC. 20071 (June 18, 1973).

Butz, to "prosecutors" but encompassing every federal official connected in any way with the *administration* of the civil rights provisions of the law.

b. Petitioners also lack discretion to apply any sanctions other than fund termination to grantees who fail to comply with the restrictions imposed on the use of federal funds. Under § 509 of the Act, petitioners are required simply to make no "further payments" to noncomplying grantees.

c. Apart from this lack of discretion, nowhere does the Crime Control Act authorize the imposition of a *civil penalty* on grantees for their failure to comply with the statutory restrictions on the use of funds under this federal grant-in-aid program. Unlike the petitioners in *Butz* who initiated prosecutorial proceedings, petitioners here have neither the discretion nor the authority to seek a license revocation or any other civil penalty. *Cf. Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980) (imposition of a monetary fine). Instead, the only sanction here—which the government admits is "coercive not punitive," J.A. 297—is one that denies to a noncomplying grantee the federal aid for which it is not eligible.

Because of the nature of fund termination proceedings in grant-in-aid programs, and particularly because of §§ 518(c)(2) and 509, petitioners do not fit within the exception for prosecutors recognized in *Butz*. Petitioners do not "have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought," 438 U.S. at 515, and they in fact have no authority whatsoever to seek the imposition of a civil penalty on their grantees. The pursuit of their policy against ever initiating administrative proceedings accordingly has none of the characteristics of a "prosecutor's decision to initiate or move forward with a criminal prosecution." *Id.*

2. Petitioners also cannot be accorded an absolute immunity on the record in this case. Under their own regulatory policy, petitioners denied themselves the decision-making power to initiate administrative proceedings. Moreover, nowhere in the affidavits they filed in the trial court did petitioners describe their functions in any way resembling those of prosecutors.

a. At the time this litigation was commenced, petitioners still adhered to a regulation which stated an express preference for referring matters of noncompliance to the Civil Rights Division of the Department of Justice in lieu of initiating administrative fund termination proceedings. While that regulation, adopted prior to amendment of § 518 in 1973, stated:

> Where the responsible Department official determines that judicial proceedings . . . are as likely or more likely to result in compliance than administrative proceedings . . . , he shall invoke the judicial remedy rather than the administrative remedy [23]

it was interpreted by petitioner Velde to "require LEAA to pursue court action and not administrative action to resolve matters of employment discrimination," J.A. 90.[24] The uniform pursuit of this policy is reflected by the conclusion reached by the House Judiciary Committee in 1976: "LEAA has never terminated payment of funds to

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[23] 28 C.F.R. § 42.206(a) (1973); *see* 37 Fed. Reg. 16671 (August 18, 1972).

[24] This statement by petitioner Velde was made in a letter sent to Rep. Charles Rangel in an attempt to explain why LEAA had not initiated administrative proceedings against the Philadelphia Police Department, J.A. 90, a grantee which LEAA in 1974 had formally determined to be in noncompliance, *see* J.A. 97.

The existence of this absolute policy was also confirmed by the senior attorney in LEAA's Office of Civil Rights Compliance, in a 1975 interview: "She reports that, when the agency discovers discrimination, its policy is to seek judicial relief *rather* than to stop paying out the money." C.A. App. 844 (emphasis in original).

any recipient because of a civil rights violation."[25] To be sure, this regulatory policy contravened the statutory mandate in § 518(c)(2) of the Crime Control Act.[26] But the point here is simply that, under LEAA's own regulations as interpreted by Mr. Velde, none of the petitioners had discretion—much less a broad "prosecutorial" discretion—to do other than decline to initiate administrative proceedings.

b. Even more compelling, none of the petitioners claimed—in the affidavits filed by the government in the trial court—either the authority or the responsibility for refusing to initiate administrative fund termination proceedings. *See* J.A. 236-64. Although the government here cites to petitioners' affidavits, *see* Pet. Br. 7 n.9, 25-28, it conveniently does not quote from them. Nowhere in

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[25] H.R. REP. No. 94-1155, 94th Cong., 2d Sess. 11 (1976). Additional findings by the Judiciary Committee are set forth in n.10 at 6 *supra*. Similar findings were made in November, 1975 by the United States Commission on Civil Rights, *see* n.8 at 5-6 *supra*.

[26] It is precisely this regulatory policy which Congress in 1973 sought "to reverse," 119 CONG. REC. 20071 (June 18, 1973) (Rep. Jordan), when it enacted Rep. Jordan's amendment as § 518(c)(2). *See generally* the legislative history discussed at 1-3 *supra*, and in the Appendix to this Brief at 1a-24a *infra*.

Contrary to the express action and intent of Congress in 1973, petitioners neither reversed their practices nor even altered their regulation. Instead, at the time this lawsuit was filed in September, 1975, petitioners still adhered to their regulation and policy against initiating administrative fund termination proceedings. Finally, three months *after* this lawsuit was filed, petitioners proposed to eliminate the policy, 40 Fed. Reg. 56454 (December 3, 1975), although they did not alter their practices. As Rep. Charles Rangel observed in the spring of 1976: "LEAA's unlawful regulatory preference remains in effect today." *LEAA Hearings before the Subcommittee on Crime of the House Committee on the Judiciary*, 94th Cong., 2d Sess. 606 (1976). Rep. Jordan was a bit more blunt: "Simply put, LEAA's civil rights regulations contravene the law." *Id.* at 446. Ultimately, ten months after this lawsuit was filed, petitioners promulgated the proposed regulation as a final rule. 41 Fed. Reg. 28478 (July 12, 1976).

those affidavits did petitioners describe their functions as prosecutorial or their roles as involving prosecutorial discretion. Instead, petitioners uniformly described themselves as administrators and consistently asserted that they had acted within the scope of their administrative duties.[27]

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[27] Petitioner Richard W. Velde stated that he had held several administrative positions at LEAA: first he was "Associate Administrator," later he was "Deputy Administrator for Policy Development," and finally, on September 5, 1974, he became the "Administrator" of LEAA. J.A. 236. He noted that in the latter capacity, as Administrator, he had "delegated" to the "director of the Office of Civil Rights Compliance" the "authority and responsibility for insuring that recipients of LEAA funds comply with applicable civil rights laws, statutes, orders, rules and regulations." J.A. 237; *see also* J.A. 244-46. Petitioner Velde also stated that he nonetheless remained "responsible for establishing the basic policy and direction that LEAA will pursue in meeting its civil rights obligations." *Id.* In carrying out this responsibility among others, petitioner Velde was authorized only to "perform predominantly executive rather than quasi-legislative or quasi-judicial functions." C.A. App. 205 (Attachment 1 to the Affidavit of Edward H. Levi). Petitioner Velde concluded that all of his actions "were fully in the discharge of my official duties and responsibilities as Administrator." J.A. 243.

Petitioner Charles R. Work stated that from November 2, 1973, until November 21, 1975, he had served as LEAA's "Deputy Administrator for Administration." J.A. 251. He claimed that in this capacity he had been delegated authority which "involved taking final action on internal LEAA administrative management matters." *Id.*; *see also* J.A. 255-61. He stated that although he had no "delegated authority in the day-to-day operations of LEAA's civil rights programs" and "had no regular direct contact with the day-to-day operations of the Office of Civil Rights Compliance," he nonetheless was the supervisor of petitioner Herbert C. Rice, who "reported to me periodically with respect to operations questions." J.A. 252-53.

Petitioner Herbert C. Rice stated that he had been the "Director of the Office of Civil Rights Compliance . . . since May of 1971," and that his office had "the responsibility of establishing comprehensive procedures and programs for effective enforcement of civil rights responsibilities." J.A. 262. These responsibilities, as dele-

Petitioners' own affidavits thus fail even to raise a factual issue about the existence or scope of any prosecutorial responsibilities which they may have had. In view of their policy, they had no such responsibilities. They accordingly are not entitled to absolute immunity.

C. The absolute immunity recognized in *Butz* for federal officials who initiate prosecutorial proceedings is premised upon the adversarial checks and safeguards which govern the decision to prosecute, *see* 438 U.S. at 512-17. Such checks and safeguards to protect respondents' constitutional rights are not present here, since respondents could not be parties to administrative actions designed to enforce those rights which petitioners delib-

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gated by petitioner Velde, J.A. 244-46, included developing regulations, directives and guidelines; developing policy on technical assistance; coordinating policies with other federal agencies; conducting audits, compliance reviews, and complaint investigations; and conducting negotiations and recommending sanctions. In carrying out those responsibilities, petitioner Rice alleged "that a number of judgments must be made daily by me both in making policy and in making decisions to carry out policy." On these policy matters, petitioner Rice noted that he sought advice and counsel from various of his supervisors including "the Administrator," and he stated that he "reported directly" to petitioner Work. J.A. 263.

Petitioner Edward H. Levi stated that he had been Attorney General since February 6, 1975, and that he therefore had "certain powers and duties" with regard to LEAA including "general policy guidance, budgetary review and regulatory supervision." J.A. 247. These powers and duties were considerable. *See generally* C.A. App. 202-29 (Attachments 1 and 2 to the Affidavit of Edward H. Levi). Petitioner Levi was authorized "to prescribe policies for the guidance of the Administration in performing its functions," and "to review such of the day-to-day operations of the Administration as may be necessary to assure compliance with the prescribed policies." *Id.* at 204-05. The policy and regulatory roles were backed up by petitioner Levi's "far-reaching budgetary powers over the Administration." *Id.* at 206. For example, petitioner Levi's "control over the budget" enabled him "to determine . . . the relative emphasis which the Administration will place on various functions." *Id.*

erately never brought.[28] Moreover, as Chief Justice Burger explained for the unanimous Court in *Scheuer v. Rhodes*, *supra*, the policy justification for a grant of immunity—whether absolute or qualified—is to encourage government officials to act. This justification disappears when officials, such as petitioners here, are charged with not acting at all.

1. In *Butz*, this Court held that the agency official who decides to initiate a prosecutorial proceeding may be entitled to an absolute immunity "[*b*]*ecause* the legal remedies already available to the defendant in such a proceeding provide sufficient checks on agency zeal." 438 U.S. at 516 (emphasis added). Two sets of remedies, in fact, are available to a defendant as checks on agency zeal in such a proceeding. Initially, the "decision to proceed with a case is subject to scrutiny in the proceeding itself," a proceeding in which "an impartial trier of fact" can render "an independent judgment as to whether the prosecution is justified." *Id.* Thereafter, because of the provisions for "judicial review" of agency proceedings, a defendant's "claims that the proceeding is unconstitutional may also be heard by the courts." *Id.*[29]

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[28] In *Butz*, the Court granted prosecutors absolute immunity from suits by the targets of prosecutorial proceedings because "the defendant in an enforcement proceeding has ample opportunity to challenge the legality of the proceeding." 438 U.S. at 515. The Court, however, did not consider whether this rationale would be applicable to suits by individuals in the position of the respondents here, because it thought that "there is not likely to be anyone willing and legally able to seek damages from the officials if they do not authorize the administrative proceeding . . . ." *Id.* It is obvious, of course, that this lawsuit is respondents' *only* means of challenging the legality of petitioners' failure to carry out their constitutional and statutory obligations, a challenge which would be completely frustrated if petitioners were accorded an absolute immunity.

[29] These administrative and judicial checks on agency zeal are similar to "the safeguards built into the judicial process," *Butz v. Economou*, *supra*, 438 U.S. at 512. It is the existence of these ju-

These "safeguards," *id.* at 512, 514; these "checks on agency zeal," *id.* at 516, are lost where there is no decision to prosecute, particularly where there is an across-

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dicial checks and safeguards which earlier led this Court in *Imbler v. Pachtman, supra,* 424 U.S. at 431, to limit its decision to "hold only that in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages." As the Court in *Imbler* summarized, the checks and safeguards on prosecutorial zealousness "include the remedial powers of the trial judge, appellate review, and state and federal post-conviction collateral remedies. In all of these the attention of the reviewing judge or tribunal is focused primarily on whether there was a fair trial under law." *Id.* at 427.

Because of the focus in *Butz* and *Imbler* on the checks and safeguards that surround a prosecutor's decision to prosecute and his presentation of the case, and also because of the importance of a prosecutor's "quasi-judicial" functions to the immunity doctrine, the courts of appeals subsequent to *Butz* have uniformly allowed prosecutors an absolute immunity only for their "advocacy" functions of initiating and carrying out a prosecution, and not for the actions taken by prosecutors in their administrative or investigative roles. *Mancini v. Lester,* 630 F.2d 990 (3d Cir. 1980) (county prosecutor and deputy attorney general are not entitled to absolute immunity for actions taken in their administrative or investigative roles); *Marrero v. Hialeah,* 625 F.2d 499 (5th Cir. 1980) (state prosecutors are not protected by absolute immunity for actions taken in their administrative or investigative roles); *Hampton v. Hanrahan,* 600 F.2d 600 (7th Cir. 1979), *cert. denied on relevant issue,* 446 U.S. 754, 759 (1980) (state prosecutors and federal law enforcement officials are not protected by absolute immunity for actions taken in their administrative or investigative roles); *Forsyth v. Kleindienst,* 599 F.2d 1203 (3d Cir. 1979) (two former U.S. Attorneys General are not protected by absolute immunity for actions taken in their administrative roles); *see also Miller v. DeLaune,* 602 F.2d 198 (9th Cir. 1979) (federal Internal Revenue Service official is not protected by absolute immunity); *cf. Halperin v. Kissinger,* 606 F.2d 1192 (D.C. Cir. 1979), *aff'd by equally divided court,* 69 L. Ed. 2d 367 (1981) (the President and his advisors are not protected by absolute immunity). Even prior to this Court's decision in *Butz,* the courts of appeals had uniformly denied absolute immunity to federal and state prosecutors who had been acting not in their "quasi-judicial," prosecutorial capacities but in their administrative or investigative roles. *Slavin*

the-board policy never to initiate enforcement proceedings. In this case, petitioners' refusals to initiate administrative proceedings were never able to be subjected to scrutiny in any administrative proceeding, and thus were never able to be subjected thereafter to judicial review of an agency proceeding.

Since the remedial oversight premise for extending absolute immunity to the official who has the discretion to initiate and who does initiate a proceeding is altogether absent here, and since the only means of providing redress and of deterring official misconduct is an action such as this, there is no absolute immunity in an action such as this.[30] Accordingly, even if petitioners here had enjoyed broad discretion with respect to a prosecutorial proceeding, they nonetheless would not be entitled to absolute immunity from liability for following an unconstitutional and illegal policy of never enforcing the law.

2. The final legal roadblock barring petitioners from entitlement to absolute immunity arises from the very reason for the existence of the immunity doctrine. As

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v. Curry, 574 F.2d 1256 (5th Cir. 1978) (state officials); *Briggs v. Goodwin*, 569 F.2d 10 (D.C. Cir. 1977), *cert. denied*, 437 U.S. 904 (1978) (federal officials); *Helstoski v. Goldstein*, 552 F.2d 564 (3d Cir. 1977) (federal officials); *Guerro v. Mulhearn*, 498 F.2d 1249 (1st Cir. 1974) (state officials); *Hampton v. Chicago*, 484 F.2d 602 (7th Cir. 1973), *cert. denied*, 415 U.S. 917 (1974) (state and federal officials); *cf. Zweibon v. Mitchell*, 516 F.2d 594 (D.C. Cir. 1975), *cert. denied*, 425 U.S. 944 (1976) (federal officials).

[30] The absence of any administrative or judicial checks and safeguards also can be viewed as a sufficient reason to deny absolute immunity even to officials who decide to prosecute and who perform adjudicative functions. In *Wood v. Strickland*, *supra*, for example, the school board members concededly were "adjudicators in the school disciplinary process," roles in which the school board members "must judge whether there have been violations of school regulations and, if so, the appropriate sanctions for the violations." 420 U.S. at 319. Nonetheless, the school board members were denied absolute immunity for their allegedly unconstitutional decisions to prosecute and to punish.

Chief Justice Burger explained at some length for the unanimous Court in *Scheuer v. Rhodes*, *supra*, the consistent legal justification for allowing any immunity—absolute or qualified—is to encourage public officials to act, not to encourage them not to decide or not to act at all. "Implicit in the idea that officials have some immunity—absolute or qualified—for their acts, is a recognition they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error than not to decide or act at all." 416 U.S. at 242. In other words, the immunity doctrine is based on a single "policy consideration [which] seems to pervade the entire analysis: the public interest requires decision and action to enforce laws." *Id.* at 241. Officials "who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices." *Id.* at 241-42.

Although none of the petitioners here claimed responsibility for not initiating the administrative proceedings required under their governing statute, J.A. 236-64, the fact of the matter is that there were no administrative proceedings despite formal determinations that their recipients were in civil rights noncompliance. When officials such as petitioners here are responsible for acting but do not act, or even refuse to act at all, the immunity which they claim is drained of its justification. Accordingly, petitioners here should be barred from claiming entitlement to any immunity whatsoever. At a minimum, petitioners have no claim to absolute immunity.

II. Respondents Have A Cause Of Action For Damages To Redress The Deprivation Of Their Fifth Amendment Rights Based Upon Their Allegations Of Petitioners' "Willful And Malicious" Refusal To Enforce Restrictions Imposed By The Fifth Amendment And By The Crime Control Act Upon The Use Of Federal Funds To Support Discriminatory Practices Of LEAA Grantees

Petitioners' second argument [31] is nominally addressed to the question whether this Court should accord to these respondents the same right, to bring a constitutional cause of action for damages for the violation of Fifth Amendment guarantees which they have alleged, as was recognized in *Davis v. Passman*, 442 U.S. 228 (1979); *see also Carlson v. Green*, 446 U.S. 14 (1980); *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). Their brief, however, fails to address the issue squarely [32]

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[31] This issue was not decided below—in fact, it was never even raised by the government in either the district court or the court of appeals—and it should not be considered by this Court. *See* discussion in n.44 at 42-43 *infra*.

[32] Perhaps the clearest indication of the government's approach is the fact that it neither cites nor discusses the seminal decision of this Court recognizing an implied constitutional cause of action for damages, *Bivens v. Six Unknown Fed. Narcotics Agents*, *supra*. Although *Davis v. Passman*, *supra*, and *Carlson v. Green*, *supra*, receive bare mention, nowhere in its brief does the government contend that this Court erred in *Butz v. Economou*, *supra*, 438 U.S. at 504, when it stated that "the decision in *Bivens*, established that a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal-question jurisdiction of the district courts to obtain an award of monetary damages against the responsible federal official."

In any event, it is clear under the analysis of these cases that respondents' complaint adequately alleges injury resulting from the deprivation of constitutional rights which justifies an implied cause of action for damages. The constitutional protection which respondents seek to enforce was succinctly recognized in *Davis*, 442 U.S. at 234 (citations omitted): "the Due Process Clause of the Fifth Amendment forbids the Federal Government from denying equal protection of the laws." Since the substantive content

but instead presents a curious array of arguments about legal propositions which were not ruled on by the courts

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of the equal protection guarantee does not differ between the Fifth and Fourteenth Amendments, *see, e.g., Bolling v. Sharpe*, 347 U.S. 497 (1954), the federal (as well as the state) government's "constitutional obligation requires it to steer clear . . . of giving significant aid to institutions that practice racial or other invidious discrimination." *Norwood v. Harrison*, 413 U.S. 455, 467 (1973).

Respondents have also alleged "a cause of action which asserts this right," *Davis v. Passman, supra*, 442 U.S. at 234. Like the plaintiff in *Davis*, indeed, "[l]ike the plaintiffs in *Bolling v. Sharpe, supra*, [respondents rest their] claim[s] directly on the Due Process Clause of the Fifth Amendment [and claim] that [their] rights under the Amendment have been violated, and that [they have] no effective means other than the judiciary to vindicate these rights." 442 U.S. at 243 (footnote omitted). Therefore, respondents are "appropriate part[ies] to invoke the general federal question jurisdiction of the District Court to seek relief." *Id.* at 244.

Respondents' cause of action under the Fifth Amendment may be defeated here only "in two situations. The first is when [petitioners] demonstrate 'special factors counseling hesitation in the absence of affirmative action by Congress.' The second is when [petitioners] show that Congress has provided an alternative remedy which it explicitly declared to be a substitute for recovery directly under the Constitution and viewed as equally effective." *Carlson v. Green, supra*, 446 U.S. at 18-19 (1980) (citations omitted.) Neither situation is present in this case.

First, as in *Carlson*, "[p]etitioners do not enjoy such independent status in our constitutional scheme as to suggest that judicially created remedies against them might be inappropriate. Moreover, even if requiring them to defend [respondents'] suit might inhibit their efforts to perform their official duties, the qualified immunity accorded them under *Butz v. Economou* provides adequate protection." *Id.* at 19.

Second, also as in *Carlson*, "we have here no explicit congressional declaration that persons injured by federal officers' violations of the [Fifth] Amendment may not recover money damages from the [officers]." *Id.*

Third, while respondents have not abandoned the claim (contrary to the assertion in Pet. Br. at 39 n.26) that they have an implied statutory cause of action under the Crime Control Act, as in *Carlson* additional factors suggest that the constitutional cause of action provides a more effective remedy. In addition to compen-

below and which for the most part were not even presented to the courts below. We address these contentions *seriatim.*

A. Petitioners say that the respondents are not entitled to proceed to discovery and trial on the allegations of their complaint because "the complaint does not allege and the record does not indicate that petitioners purposefully discriminated," Pet. Br. 29. To support this asser-

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sating respondents for the denial of their rights, the constitutional claim "serves a deterrent purpose," for "[i]t is almost axiomatic that the threat of damages has a deterrent effect." 446 U.S. at 21 (footnote omitted). Further, "punitive damages may be awarded in a *Bivens* suit," a remedy which is "especially appropriate to redress the violation by a Government official of a citizen's constitutional rights." 446 U.S. at 22. In fact, as the Court noted when commenting on *Carey v. Piphus*, 435 U.S. 247 (1978), "punitive damages may be the only significant remedy available . . . where constitutional rights are maliciously violated but the victims cannot prove compensable injury." 446 U.S. at 22 n.9. Additionally, again as in *Carlson*, there is no question that respondents here are entitled to a jury trial on their *Bivens* cause of action, 446 U.S. at 22. Finally, although respondents sought injunctive relief against petitioners to prevent future violations of the Fifth Amendment, respondents' damages claim is the only viable remedy available with regard to petitioners' past conduct. In other words, for respondents, as "[f]or Davis, as for Bivens, 'it is damages or nothing.'" *Davis v. Passman, supra,* 442 U.S. at 245 (footnote omitted), quoting from 403 U.S. at 410 (Harlan, J., concurring in the judgment).

Of course, some or all of these remedies may also be available in respondents' implied *statutory* cause of action, the precise contours of which have not been determined because the district court never passed upon respondents' implied statutory claims, although they were fully briefed. For this reason, and because the court of appeals' majority held that respondents have an express cause of action under the statute, Cert. Pet. App. 7a n.16; *compare id.* at 9a n.5 (dissenting opinion), we do not know what causes the government to misunderstand the respondents to be relinquishing their statutory claims, *see* Pet. Br. 39 n.26. The matter is simply not presented in this case because the government, in its Petition for Certiorari, did not seek review of the court of appeals' determination on this issue.

tion, the government has erected a shadow-structure without substance.

1. The government would have this Court simply ignore the explicit language of the complaint, which charges that petitioners' actions were "willful and malicious," J.A. 44, on the ground that these are merely "conclusory term[s]," Pet. Br. 31 n.21. There is no basis in law for treating as surplusage a specific—and, in the government's own view of the law, critical—allegation of a plaintiff, or for imposing retrospectively an even more detailed burden of pleading upon a plaintiff. *Cf. Gomez v. Toledo*, 446 U.S. 635 (1980).

2. The government further urges that these "conclusory term[s]" are "not supported by any allegations of fact" in the complaint, Pet. Br. 29 n.21. To the contrary, respondents' characterization of petitioners' conduct not only is a specific elaboration of the manner in which petitioners were alleged to have been "acting unconstitutionally and in excess of their authority," *see* J.A. 41-43, but it is amply supported throughout the complaint by repeated references to petitioners' *knowing refusals* to change their policies and practices, *see, e.g.*, J.A. 21-41. Based upon their own experiences and contacts with the petitioners, respondents had every reason to believe that petitioners' conduct was "willful and malicious," and so they alleged. The government's incantation of a demand for further specificity can only be interpreted as a desire to limit triable cases to those in which the victim of unconstitutional conduct can allege that defendant officials confessed their racial *animus*.

3. The government also claims that the "conclusory" allegations of intent are "inconsistent with petitioners' undisputed actions." Pet. Br. 29 n.21. Respondents' allegations about "petitioners' [pre-complaint] extensive efforts to secure compliance with the governing antidiscrimination laws," *see* Pet. Br. 30, speak for themselves: In every instance cited by the government the complaint

alleges that petitioners' actions were deliberately and wholly inadequate to fulfill the civil rights obligations imposed on petitioners by the Constitution and by the Crime Control Act. As to the remainder of "petitioners' undisputed actions," *id.* at 31 n.21, it is sufficient merely to note, *first*, that most of the assertions made by the government were not submitted to the district court in "uncontradicted affidavits," *id.* at 30, but in an unsworn document, *see* discussion at 8-9 *supra; second*, that the blanket stay of discovery ordered by the trial court prevented respondents from contravening those affidavits which the government did file, *see* text at 46 n.47 *infra*; and *third*, that the alleged enforcement steps on which the government relies were all taken after September 4, 1975, the date on which this lawsuit was filed.[33] Petitioners' belated actions could have no effect on respondents' claims for damages arising from injuries already suffered by them as a result of petitioners' prior inactions and refusals to carry out their constitutional and statutory civil rights enforcement obligations.

4. Finally, the government's argument is flawed because, as we discuss more extensively in the next section, it misinterprets the nature of the constitutional violation

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[33] As previously discussed, ten months after this suit was commenced, petitioners adopted a final regulation withdrawing their previous policy against initiating administrative fund termination proceedings. *See* note 26 at 23, *supra*. In December, 1975, petitioners allegedly hired a Special Assistant to the Administrator on Women and Minority Rights, *see* J.A. 239, a job which petitioner Velde stated had been occupied by a different individual in an acting capacity for "a[n unspecified] period of time prior to that date." *Id.* On January 29, 1976, nearly five months after this suit was filed and two weeks after respondents moved for a preliminary injunction requiring initiation of administrative fund termination proceedings against the Philadelphia Police Department based upon petitioners' then two-year-old determination of noncompliance, J.A. 2, 46-233, LEAA finally did start proceedings, *see* J.A. 242. (Petitioners' prior consistent policy refusing to initiate formal administrative proceedings is described in notes 23-25 and accompanying text at 22-23 *supra*.

alleged by the respondents. As part of its argument that the complaint contains inadequate allegation of intent, the government asserts, Pet. Br. 30, that it was

> the state and local law enforcement agencies that received LEAA funds, not petitioners, [who] practiced illegal discrimination. . . . respondents did not allege that petitioners required, encouraged, aided, or affirmatively approved the discriminatory behavior of the recipient agencies.

Even assessed on its own terms, this is a misrepresentation of what is in the complaint.[34] More fundamentally, however, it refuses to recognize what the Fifth Amendment requires of petitioners and other federal government officials. Nowhere in their argument do petitioners cite *Norwood v. Harrison*, 413 U.S. 455, 467 (1973), where the Chief Justice, for a unanimous Court, declared that a government agency's "constitutional obligation requires it to steer clear . . . of giving significant aid to institutions that practice racial or other invidious discrimination." As the opinion pointed out, this was not a novel constitutional principle: "This Court has consistently affirmed decisions enjoining state tuition grants to students attending racially discriminatory private schools." *Id.* at 463. *See also Gilmore v. City of Montgomery*, 417 U.S. 556 (1974).[35] With the relevant constitutional principles

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[34] The complaint alleges that petitioners' "refusal to enforce their constitutional and statutory civil rights obligations has served to finance and thus to perpetuate the discriminatory and exclusionary employment practices of LEAA recipients," J.A. 26.

[35] In an accompanying footnote to the text quoted from *Norwood v. Harrison, supra*, the Chief Justice cited three tuition grant cases along with other decisions such as *Coit v. Green*, 404 U.S. 997 (1971), *aff'g Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971).

The government here fails to consider that decision, *Norwood* or *Gilmore*, or the many similar lower court rulings reaffirming the constitutional principle that government agencies may not provide funding to recipients which are known to practice discrimination. *E.g., Legal Aid Soc. of Alameda County v. Brennan*, 608 F.2d

in mind, the adequacy of respondents 'complaint to state a cause of action is patent.

B. Petitioners next assert that the complaint was deficient because "it does not allege an adequate causal connection between petitioners' actions and respondents' injury." Pet. Br. 31. Petitioners can make this statement only because they both misstate the nature of respondents' cause of action and misconstrue the applicable law.

1. The government begins its argument by repeating its erroneous characterization of the injury which respondents claim to have suffered: "Respondents essentially claim that by failing to initiate fund termination proceedings against recipient agencies that discriminate, petitioners themselves became responsible for the discrimination and may be held liable in damages." Pet. Br. 31-32. But the constitutional violations alleged here occurred not when discrimination was practiced by local recipients, but when the federal officials knowingly provided financial assistance which supported that race- and sex-based discrimination. Petitioners' "constitutional obligation requires [them] to steer clear . . . of giving significant aid to institutions that practice racial or other invidious discrimination." *Norwood v. Harrison, supra,* 413 U.S. at 467.[36]

1319 (9th Cir. 1979), *cert. denied,* 447 U.S. 921 (1980); *Committee for Full Employment v. Blumenthal,* 606 F.2d 1062 (D.C. Cir. 1979); *Adams v. Richardson,* 480 F.2d 1159 (D.C. Cir. 1973) (*en banc*); *Gautreaux v. Romney,* 448 F.2d 731 (7th Cir. 1971); *NAACP, Western Region v. Brennan,* 360 F. Supp. 1006 (D.D.C. 1973).

[36] Because the government improperly identifies the injury alleged by respondents, the lines of cases cited in its brief have little or no bearing upon this case.

Most curious is the government's discussion of "state action" decisions under the Fourteenth Amendment. *See* Pet. Br. 36-37. Those decisions concerned the circumstances in which private parties—otherwise unencumbered by constitutionally based limitations upon their conduct—will be considered so closely related,

2. The government attempts to buttress its argument by suggesting that "it cannot be maintained that . . . the recipient agencies would necessarily have stopped discriminating if LEAA funding had been terminated," Pet. Br. 35. The virtually identical argument was expressly rejected by this Court in *Norwood v. Harrison*, *supra*. The Chief Justice pointed out, in that decision, that the lower court had erroneously justified its dismissal of the case by placing "great stress on the absence of a showing by appellants that 'any child enrolled in private school, if deprived of free textbooks, would withdraw from private school and subsequently enroll in the public schools.'" 413 U.S. at 465 (citation omitted). While not accepting this factual uncertainty, the Court

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entwined or entangled with government as to make their actions subject to constitutional rules nominally addressed only to government officials. Since "the Due Process Clause of the Fifth Amendment [itself] forbids the Federal Government from denying equal protection of the laws," *Davis v. Passman*, *supra*, 442 U.S. at 234, respondents here are not seeking to impose restrictions upon petitioners on the basis of petitioners' relationship to discriminating grantees. As they allege in their complaint, *respondents' Fifth Amendment rights* have been violated by *petitioners' refusals* to carry out *petitioners' Fifth Amendment and statutory civil rights obligations.*

The government makes the same error in its treatment of the other cases it cites. In *Martinez v. California*, 444 U.S. 277 (1980), for example, the plaintiff did not allege that the parole board's decision to release the prisoner violated an affirmative obligation (such as the obligation to terminate funds which support discriminatory practices) imposed by the Constitution or federal law. The instant case also bears no resemblance to *Rizzo v. Goode*, 423 U.S. 362 (1976), where the trial court found *after an evidentiary hearing* that the defendant police officials were not responsible for acts of misconduct by subordinate officers, and where this Court recognized no affirmative federal constitutional or statutory obligation imposed upon the police officials to assume responsibility for subordinate officers' day-to-day behavior. Similarly, *Francis-Sobel v. University of Maine*, 597 F.2d 15 (1st Cir.), *cert. denied*, 444 U.S. 949 (1979), also turned upon the lack of any affirmative constitutional or statutory obligation of the EEOC.

held that in any event it was irrelevant: "We do not agree with the District Court in its analysis of the legal consequences of this uncertainty, for the Constitution does not permit [government] to aid discrimination even when there is no precise causal relationship between [government] financial aid to a private school and the continued well-being of that school." 413 U.S. at 465-66.

C. The government's causal connection argument—especially in view of its reliance upon Article III "case or controversy" decisions—might be construed as challenging respondents' standing to maintain this action. While respondents' standing is not among the questions presented and is nowhere directly questioned by petitioners, we nonetheless address this Art. III jurisdictional matter here to demonstrate that the court below was surely correct in holding that respondents "have standing to maintain this action," Cert. Pet. App. 7a n.16.[37]

"In order to satisfy Art. III, the plaintiff must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979). As summarized by the Chief Justice in *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978):

> [T]his requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury" to the plaintiff, *Warth v. Seldin*, 422 U.S. 490, 501 (1975), but also a "fairly traceable" causal connection between the claimed injury

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[37] The court below was unanimous in its view that respondents possessed the requisite Art. III standing to maintain this action. The majority upheld respondents' standing based upon their characterization of the case as one in which respondents had suffered injury caused directly by petitioners' alleged Fifth Amendment and statutory violations. Cert. Pet. App. 7a n.16. *See* discussion at 36-37 *supra* and 39-40 *infra*. In a separate opinion, Judge Tamm held that respondents, even under petitioners' mischaracterization of this case, had sufficiently alleged their standing to survive the motion to dismiss. Cert. Pet. App. 8a-14a.

and the challenged conduct. *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977). *See also Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973).

These injury and causation/redressability requirements are abundantly satisfied, as the court below held, in this case.[38]

Respondents were injured, as they alleged, by petitioners' refusals to carry out their constitutional and statutory civil rights obligations and by petitioners' consequent continuation of federal funding to grantees which were also discriminating against respondents and other members of the class they seek to represent. *See* J.A. 18-41.[39] As in *Norwood v. Harrison*, *supra*, the alleged constitutional (and, here, statutory) violations by the petitioner government officials caused the injuries which respondents assert as the basis for their claim against *petitioners;* similarly, here the relief sought by respondents would remedy and compensate for the injuries caused by *petitioners'* transgressions: injunctive relief (in the nature of mandamus) to compel petitioners and their successors to carry out their constitutionally and

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[38] Cert. Pet. App. 7a n.16.

[39] Respondents also alleged additional injuries caused by petitioners' refusals to carry out their constitutional and statutory civil rights enforcement obligations. For example, respondent National Black Police Association ("NBPA") alleged in ¶ 41d that petitioners' "refusal to enforce their constitutional and statutory civil rights obligations has required NBPA member organizations and their members to file administrative complaints and costly lawsuits to obtain their civil rights, to deplete their own financial resources through such complaints and lawsuits, to expose themselves to extra-legal sanctions and harassment for asserting their civil rights and to jeopardize the member organizations' existence and the individuals' employment by asserting their civil rights." J.A. 26. These allegations were more than sufficient to confer standing on respondent NBPA. *Hunt v. Washington Apple Advertising Comm'n*, 423 U.S. 333, 341-45 (1977); *Sierra Club v. Morton*, 405 U.S. 727, 738-39 (1972); *NAACP v. Button*, 371 U.S. 415, 428 (1963).

statutorily mandated civil rights enforcement obligations, and damages to redress petitioners' past violations. *See* J.A. 43-44. In other words, respondents here are in a position no different from that of the plaintiffs in *Norwood v. Harrison, supra; Gilmore v. City of Montgomery, supra;* or *Coit v. Green, supra. See also* cases cited in note 35 at 35-36 *supra.*

Even under petitioners' mischaracterization of this case —as one in which respondents' only injury was caused not by petitioners' Fifth Amendment violations but by the discrimination practiced by LEAA grantees, *see* Pet. Br. 28-39—respondents also have met the injury and causation/redressability requirements of Article III. As Judge Tamm stated in his separate opinion below, Cert. Pet. App. 8a-14a, respondents' complaint was adequate to survive the government's motion to dismiss since respondents would have to be given the opportunity, through discovery, to show that the initiation of fund termination proceedings (or the termination of funding to discriminatory recipients) would ultimately effect nondiscriminatory behavior by grantees —as the government itself has elsewhere suggested,[40] as the Congress expected when it amended the Crime Control Act in 1973,[41] and as the Civil Rights Commission[42] and

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[40] The government has aptly described the fund termination provisions of the Crime Control Act as "coercive not punitive." J.A. 297.

[41] Anticipated efficacy of fund termination to eliminate discriminatory conduct was the premise underlying congressional adoption of § 518(c)(2) of the Crime Control Act in 1973. *See* 119 CONG. REC. 20071 (June 18, 1973) (Rep. Jordan); *id.* at 22059 (June 28, 1973) (Sen. Bayh); *LEAA Hearings before Subcommittee No. 5 of the House Committee on the Judiciary,* 93rd Cong., 1st Sess. 623 (1973) (Rep. Hawkins).

[42] *See* U.S. Comm'n on Civil Rights, THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—1974 (Vol. VI, *To Extend Federal Financial Assistance*) 384-85 (1975):

> One argument set forth by the Department of Justice against fund termination is that it risks "potential injury" to the intended beneficiaries of Federal assistance. And the Director of OCRC [the Director of LEAA's Office of Civil Rights Com-

the federal courts [43] have found to be the case.

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pliance, petitioner Herbert C. Rice] has argued that fund termination would only serve to hurt those programs that LEAA funding was designed to help. This Commission believes that, on the contrary, fund termination can be extremely effective, with minimal injury to intended beneficiaries. For example, between the passage of the Civil Rights Act in 1964 and March 1970, HEW initiated approximately 600 administrative proceedings against noncomplying school districts. In 400 of these cases, HEW found that the school districts came into compliance following the threat of termination, with no need for termination. In only 200 cases were funds terminated. HEW subsequently determined that compliance was achieved and Federal assistance was restored in all but four of these districts.

See also C.A. App. 608-09.

[43] In *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973) (*en banc*) (*per curiam*), the court expressed no doubt about the effectiveness of fund termination proceedings to bring about compliance:

> HEW's decision to rely primarily upon voluntary compliance is particularly significant in view of the admitted effectiveness of fund termination proceedings in the past to achieve the Congressional objective.

480 F.2d at 1163 n.4. A more extensive discussion of the effectiveness of fund termination, this time in the context of a judicial decree withholding federal revenue sharing funds from the City of Chicago, is found in *United States v. City of Chicago*, 549 F.2d 415 (7th Cir.), *cert. denied*, 434 U.S. 875 (1977). There, the Court of Appeals unanimously affirmed the trial court's findings of discrimination, but the panel split on whether the trial judge should have ordered further payments of revenue sharing funds withheld pending correction of the wrongs. The majority opinion viewed the withholding as less intrusive than a wide-ranging injunctive order:

> [It was a] less drastic step of enjoining the payment of federal funds in an effort to force the noncomplying government to itself choose a means of ending illegal discrimination.
>
> * * * *
>
> [T]he withholding of revenue sharing funds . . . was properly perceived by the district court as a necessary tool in prodding the City toward ending discrimination.

549 F.2d at 440, 441. Judge Pell dissented on the ground that the withholding was *too* effective, too powerful:

[Footnote continued on page 42]

Because respondents' complaint establishes more than the "substantial likelihood" required by Article III that the relief requested would redress the injury, *see Duke Power Co. v. Carolina Environmental Study Group, Inc., supra*, 438 U.S. at 74, 75 n.20, the decision below was clearly sound.

Thus, whether the government's contentions are viewed as "standing," "cause of action," "case or controversy" or "substantive" arguments, they are unpersuasive attempts to demonstrate that respondents should be denied the opportunity to initiate discovery and submit evidence in support of their allegations of constitutional violations on the part of the petitioners.

III. Petitioners, On This Record, Cannot Demonstrate That They Should Be Accorded Qualified Immunity As A Matter Of Law

The government's final submission—which, like its second argument, was not passed upon by the court of appeals [44]—is that even if the court of appeals correctly

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[43] [Continued]

> [W]hat should have been stayed was the equitable hand of the district court rather than the flow of essential operating funds to one of the largest metropolises of this country.
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> * * * *
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> Certainly the withholding of millions of dollars from financially plagued megapolitan cities is a device designed to bring them quickly to their knees.

Id. at 442, 447.

[44] The claim that petitioners were entitled to qualified immunity as a matter of law was not made by the government before the district court, *see Memorandum of Points and Authorities in Support of Motion to Dismiss or for Summary Judgment*, filed February 9, 1976, at 31-34, and, although articulated in the government's brief, *see* C.A. *Brief for Appellees* at 51-53, it was not decided by the court of appeals. In such circumstances, this Court normally refuses to pass upon a legal claim. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 163-64 (1975); *Ramsey v. United Mine Workers*, 401 U.S. 302, 312 (1971).

Moreover, the fact that in order to decide this claim, the Court would have to perform the usual functions of a trial judge—weigh-

ruled that petitioners are not prosecutors entitled to an absolute immunity, and even if respondents' complaint adequately stated a cause of action for damages against petitioners, nevertheless the dismissal by the district court should have been affirmed because the record establishes petitioners' "entitle[ment] to qualified immunity as a matter of law," Pet. Br. 39.

If the Court decides to consider the claim, it must be rejected. Three years ago, the United States candidly and correctly articulated the basic legal doctrine applicable to, and the factual showing necessary to establish, a defense of qualified immunity.[45] In the instant case, the government does not appear to dispute those principles (except insofar as it previously suggested that resolution of a qualified immunity claim could not be made on the basis of affidavits or a summary judgment motion).

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ing and sifting the adequacy of affidavits and other record materials—provides further justification for adhering to the practice of addressing only matters decided below.

[45] In its Brief for Petitioners in *Butz v. Economou*, *supra*, at 11, 28-29, 31-32, the government partially explicated the nature of the inquiry that must be undertaken before qualified immunity can be accorded a government official. In general, as the government there said, "under the qualified immunity standard the motives and intent of the official are key elements of his ultimate liability." *Id.* at 31-32. In other words, "the defense of qualified immunity is likely to open up a wide range of questions concerning the official's motives and intent in performing his duties." *Id.* at 28. This line of "inquiry undoubtedly would entail broad discovery." *Id.*

Additionally, "the broad-ranging issues under a qualified immunity standard normally are not susceptible of determination on the basis of affidavits, but would require testimony and cross-examination." *Id.* at 29. "[M]any and perhaps most of the cases would require a more searching analysis of the defendant's motives and intent than can effectively be made under the summary judgment procedure." *Id.* at 31. Quoting from *Imbler v. Pachtman*, *supra*, 424 U.S. at 419 n.13, the government petitioners in *Butz* also pointed out that "[t]he fate of an official with qualified immunity depends upon the circumstances and motivations of his actions, as established by the evidence at trial." Brief for Petitioners, *supra*, at 29.

But petitioners' arguments on this point again misrepresent the respondents' claims and also overlook the critical facts that: (1) respondents were denied any discovery in this case; (2) none of petitioners' affidavits contains a claim that their actions were undertaken in good faith, and none supplies any supporting information which might buttress such a claim; and (3) even if they had done so, the extensive affidavits submitted *by respondents* gave rise to numerous, relevant, factual controversies which could not be resolved on either a motion to dismiss or a motion for summary judgment.

A. The government focuses undue attention upon a single aspect of respondents' claims, the failure ever to terminate funding to discriminatory grantees:

> The pleadings and accompanying affidavits in the record demonstrate that petitioners sought to enforce the antidiscrimination provisions in the Act and that they could not possibly have known that their failure to initiate funding termination proceedings violated respondents' Fifth Amendment rights. Accordingly, petitioners are entitled to a summary disposition in their favor.

Pet. Br. 40. As we have previously emphasized, respondents' claims involve far more than just funding termination—and respondents alleged far more than "mere failure" to utilize this particular enforcement mechanism. Rather, respondents complained of petitioners' deliberate, willful and malicious refusal to carry out an effective civil rights enforcement program, in every respect. Thus, disposition of petitioners' qualified immunity claims requires an evaluation of their overall course of conduct, not just consideration of the funding termination issue.

B. In *Butz v. Economou*, *supra*, this Court held that federal officials are subject to the same standards of constitutional immunity law that govern state officials, and it quoted from or cited with approval a number of decisions defining the scope of the qualified immunity available to state officers. "It is the existence of reasonable

grounds for the belief [in the propriety of actions taken] formed at the time and in light of all of the circumstances, coupled with a good faith belief, that affords a basis for qualified immunity." *Id.* at 497-98, quoting from *Scheuer v. Rhodes, supra*, 416 U.S. at 247-48. The Court also observed that good faith immunity is not available if the government official "knew or reasonably should have known that the action he took . . . would violate . . . constitutional rights . . . or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury." *Butz v. Economou, supra*, 438 U.S. at 498, quoting from *Wood v. Strickland*, 420 U.S. 308, 322 (1975). *See also Procunier v. Navarette*, 434 U.S. 555, 562 (1978) and *O'Connor v. Donaldson*, 422 U.S. 563, 577 (1975), both cited with approval in *Butz*, 438 U.S. at 498.

Under these standards, the state of mind of the officials is a key element in determining the applicability of qualified immunity, together with all of the circumstances surrounding the officials' acts. *See* note 45 at 43 *supra*. In appropriate cases, factual issues concerning the surrounding circumstances and motivations for an official's conduct can be resolved "on a *properly supported* motion for summary judgment," *Butz v. Economou, supra*, 438 U.S. at 508 (emphasis added). The motion must be properly supported because the moving party has the burden of proving that there are no material facts in dispute, *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970), and because the trial court must resolve all ambiguities and draw all favorable inferences to the benefit of the party against whom summary judgment is sought, *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). *See generally* F. R. Civ. P. 56(c). In this case, where respondents were denied any discovery, where petitioners' affidavits failed to allege that they acted in good faith, and where respondents' affidavits put the basis for respondents' actions and inactions at issue, the trial court would have erred grievously if it had granted qualified

immunity to petitioners as a matter of summary judgment.[46]

1. It would have been improper, under F. R. Civ. P. 56(f), to grant summary judgment to petitioners in light of the fact that respondents were denied any discovery by the trial court. Respondents attempted to explore the facts, circumstances, and motivations surrounding petitioners' conduct through attempted discovery initiated shortly after this action was filed.[47] Petitioners responded by obtaining a protective order staying that discovery. J.A. 1-3; *see also id.* at 340-45. Respondents' motion to vacate the stay on discovery was opposed by petitioners and was never acted upon by the trial court. J.A. 1-3.

Where a party opposing summary judgment is denied discovery of relevant facts—to say nothing of the circumstances and motivations surrounding official action which are crucial to the question of immunity—summary judgment for the movant is erroneous. The federal courts

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[46] The motion filed in the trial court by petitioners was framed in the alternative, as a motion to dismiss or for summary judgment. J.A. 234-35. Although we do not understand petitioners' argument here to be that this action should have been dismissed by the trial court entirely apart from the affidavits and other materials submitted in connection with its request for summary judgment, we nonetheless are constrained to point out again that the complaint charges petitioners with across-the-board inactions and "willful and malicious" refusals to carry out their constitutional and statutory civil rights enforcement obligations. J.A. 11-45; *see* 3-5, 15-16 *supra*. Since these allegations must be taken as true on a motion to dismiss, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), dismissal of this case would have been erroneous as a matter of law.

[47] Ten days after this action was commenced, respondents filed their (a) first interrogatories and first request for admissions, (b) first request for production of documents, (c) second interrogatories, and (d) second request for admissions. J.A. 1, 341. Petitioners obtained a protective order. J.A. 2. Thereafter, believing the stay of discovery under the protective order to be of limited duration, respondents in mid-January, 1976 served and filed a notice of deposition upon petitioner Herbert C. Rice. J.A. 2, 342. Mr. Rice refused to appear at the deposition. *See* J.A. 342-45.

of appeals have consistently reversed such judgments where the moving parties had failed to respond to interrogatories, *e.g.*, *Costlow v. United States*, 552 F.2d 560 (3d Cir. 1977); *Washington v. Cameron*, 411 F.2d 705 (D.C. Cir. 1969); *Bane v. Spencer*, 393 F.2d 108 (1st Cir. 1968), or where they refused to permit the taking of a deposition, *e.g. Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980); *Committee for Nuclear Responsibility, Inc. v. Seaborg*, 463 F.2d 783 (D.C. Cir. 1971); *Morrison Flying Serv. v. Deming Nat'l Bank*, 340 F.2d 430 (10th Cir. 1965). Summary judgment for petitioners here would have been error as a matter of law.

2. Further, summary judgment for petitioners would have been improper under F.R. Civ. P. 56(c) and (e) because of the inadequacy of their submissions. The Rules require a motion for summary judgment to be supported by admissible evidence showing that there is no genuine issue as to any material fact.[48] Petitioners' short affidavits, while admissible, set forth few facts pertaining to their civil rights enforcement activities; instead, *see* note

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[48] F.R. Civ. P. 56(c) requires that a motion for summary judgment may be considered only on "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." The use of affidavits is governed by Rule 56(e), which specifies that the "affidavits shall be made *on personal knowledge* [and] shall set forth such facts as would be admissible in evidence" (emphasis added). Rule 56(e) also allows the submission of "[s]worn or certified copies of all papers or parts thereof referred to in an affidavit" and provides that the "court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits."

The entire thrust of Rule 56 is thus to allow summary judgment only upon material facts established by *admissible* evidence. *See Adickes v. S.H. Kress & Co.*, *supra*, 398 U.S. at 159. This is the view of the leading commentators: "Affidavits . . . [and other] evidence on a summary judgment motion, may be utilized under Rule 56(e) only if the information they contain . . . would be admissible at trial," C. Wright & A. Miller, Federal Practice and Procedure § 2738, at 684 (1973). "And, of course, submitted exhibits and documents must be admissible in evidence," 6 Moore's Federal Practice ¶ 56.22[1], at 56-1328 (2d ed. 1976).

27 at 24-25 *supra*, for the most part they simply asserted that petitioners had acted as administrators within the scope of their authority. Their unsworn, uncertified, 94-page document entitled Statement of Reasons and Appendix was not admissible.[49]

Even if the Statement of Reasons and Appendix had been admissible, in combination with petitioners' affidavits it was still insufficient to establish the absence of genuine factual issues.[50] Nowhere in these submissions did petitioners assert that they had acted in good faith; nowhere did they indicate their motives for refusing to take effective civil rights enforcement actions while continuing to fund grantees whom they knew to practice discrimination; and nowhere did petitioners—who were lawyers surrounded with lawyers[51]—indicate that they did not

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[49] The Statement of Reasons and Appendix, *see* C.A. App. 624-720, *reprinted in part* at J.A. 265-303, is unsworn and uncertified. Not only is it hearsay, but it contains hearsay-upon-hearsay. Although petitioner Velde refers to it as "my Statement," J.A. 243 ¶ 22, his concession in ¶ 4 of his affidavit, J.A. 236-37, that he was "not involved in the day-to-day civil rights compliance activities of the agency" wholly precluded him from incorporating the Statement into his affidavit—since Rule 56(e) affidavits must be made "on personal knowledge." Compare the sworn hearsay statement ("one of my students saw . . .") and the unsworn statement which were both rejected under Rule 56(e) by this Court in *Adickes v. S.H. Kress & Co., supra*, 398 U.S. at 159 n.19.

[50] In support of their motion for summary judgment, petitioners also filed a four-paragraph, one-and-one-half page "statement of material facts." C.A. App. 188-89. This pleading stated no facts whatsoever. Instead, it provided an introduction to the legal arguments made in petitioners' accompanying memorandum of points and authorities.

In any event, petitioners' failure to show—in any of their submissions—that there was no genuine issue as to any material fact is amply demonstrated by respondents' statement of genuine issues, J.A. 309-39. For example, it is readily apparent that petitioners' submissions simply do not even address the question why they did not undertake any *other* enforcement activities beyond those which they asserted in the Statement of Reasons and Appendix.

[51] Although "it may safely be assumed that few school boards and school officials have ready access to counsel," *Wood v. Strick-*

know and reasonably should not have known of the constitutional principle established in such cases as *Norwood v. Harrison*, *supra*, and *Coit v. Green*, *supra*. *See also* cases cited in note 35 at 35-36 *supra*.

These omissions and unexplained gaps in petitioners' submission would have precluded them, as a matter of law, from obtaining summary judgment in the trial court. *See, e.g., Adickes v. S. H. Kress & Co.*, *supra*, 398 U.S. at 158 ("unexplained gaps" with regard to one "element in [one] aspect of the case" made summary judgment inappropriate).

3. Petitioners' motion also would have failed because of the materials submitted by respondents in opposition to it. These included not only affidavits but official documents and reports demonstrating petitioners' inactions and refusals to act, *see* J.A. 219-33, 304-494, and documents obtained from petitioners through Freedom of Information Act requests, J.A. 51-218. As a separate exhibit, respondents filed the findings of the United States Commission on Civil Rights concerning LEAA's civil rights enforcement program, which were released two months after this action was commenced. C.A. App. 481-623.[52] Respondents also tendered a statement of genuine issues in dispute listing sixty-one separate questions, and providing for each references to respondents' unanswered discovery and to the supporting affidavits and documents filed by respondents. J.A. 309-39.

In view of these materials submitted by the respondents pursuant to F.R. Civ. P. 56(e), and in view of the

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land, *supra*, 420 U.S. at 331 (Powell, J., dissenting), that certainly is not the case here. Petitioners were literally surrounded with lawyers. For example, each of the three employees immediately below petitioner Rice held the title of "Attorney-Advisor (Civil Rights)," J.A. 67; petitioner Rice, a lawyer himself, also reported to a lawyer, petitioner Work, and Rice also on occasion sought "counsel and advice" from "the General Counsel of LEAA," J.A. 263.

[52] *See* note 8 at 5-6 *supra*.

established principle that all "inferences to be drawn from the underlying facts contained in the [movant's] materials must be viewed in the light most favorable to the party opposing the motion," *United States v. Diebold, Inc., supra*, 369 U.S. at 655, petitioners could not under F.R. Civ. P. 56(c) have met their "burden of showing the absence of a genuine issue as to any material fact," *Adickes v. S. H. Kress & Co., supra*, 398 U.S. at 157.

For these reasons, there is no basis for the government's argument that on this record, the district court would have been compelled as a matter of law to grant qualified immunity, and summary judgment, to the petitioners.

CONCLUSION

For the foregoing reasons, respondents respectfully pray that the judgment below be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

RELEVANT PORTIONS OF THE LEGISLATIVE HISTORY OF § 518(c) OF THE CRIME CONTROL ACT AS ENACTED IN 1973 AND AS AMENDED IN 1976

Section 518(c) of the Crime Control Act was enacted in 1973 and amended in 1976 through amendments offered by Rep. Barbara Jordan. The language of § 518 (c), as enacted in 1973, is set forth in the Crime Control Act of 1973, Pub. L. No. 93-83, § 2 (Aug. 6, 1973), 87 Stat. 197, *see* 42 U.S.C. § 3766(c) (Supp. V 1975), and also is set forth at Pet. Br. 2-3. Section 518(c) was later amended by the Crime Control Act of 1976, Pub. L. No. 94-503, § 122 (Oct. 15, 1976), 90 Stat. 2404, 2418, *see* 42 U.S.C. § 3766(c) (1976). This Appendix sets forth the relevant legislative history pertaining to the *reasons* for the enactment and amendment of § 518(c).

The amendment authored by Rep. Jordan in 1973 was favorably reported by the House Judiciary Committee as set forth in H.R. REP. No. 93-249, 93rd Cong., 1st Sess. 27 (June 5, 1973). Thereafter, Rep. Jordan explained the reasons for her amendment on the floor of the House, 119 CONG. REC. 20070-71 (June 18, 1973):

> It is now more than 5 years since the National Advisory Commission on Civil Disorders identified the lack of adequate representation of minorities in law enforcement agencies as one of the key problems in the breakdown of communication between police and the citizens of the ghetto. While progress has been made in some areas in the employment of minorities and women in law agencies, many problems of discrimination remain. One need go no further than the reports of decided Federal cases to obtain evidence of the persistence and prevalence of racism in employment.

For example, a Federal district court in Mississippi found in 1971 that the Mississippi Highway Patrol had never employed a single black officer. Of 743 persons employed by the department of Public Safety in 1971, only 17 were blacks and they were all employed as cooks or janitors. *Morrow v. Crisler*, 4 E.P.D. paragraph 7541 (S.D.Miss. 1971); aff'd —— F.2d —— (5th Cir.; April 18, 1973).

While the situation in Mississippi is perhaps the most blatant, similar problems of discrimination have been found by Federal courts to exist in Alabama, Massachusetts, and Bridgeport, Connecticut. See *NAACP v. Allen*, 340 F.Supp. 703 (M.D. ALA. 1972); *Castro v. Beecher*, 459 F.2d 725 (1st Cir. 1972); *Bridgeport Guardians Inc. v. Bridgeport Civil Service Commission* 5 CCH E.P.D. 8502 (D. Conn. 1973).

Other cases alleging discrimination are pending before federal courts in Alabama, Pennsylvania, Georgia, Connecticut, Illinois, California and Ohio, and before State commissions in Missouri, Kansas, Massachusetts, Indiana, Pennsylvania and Connecticut.

The existing LEAA statutes contain no provisions designed to prevent discrimination in benefits or employment on the basis of race, color, national origin, or sex. As a result, LEAA has been particularly slow to develop an effective civil rights enforcement program. In fact, it was not until 2 years after its establishment that LEAA admitted it has a civil rights enforcement responsibility and created a civil rights compliance office and implementing regulations.

The administration suggested new language for this legislation, with what I hope was the intention of strengthening LEAA's civil rights enforcement

powers and responsibilities, which has largely been incorporated in section 518(b) [Section 3766(c)] of H.R. 8152. These provisions parallel the language of title VI of the Civil Rights Act of 1964 with an added prohibition of discrimination on the basis of sex, but they also specify special procedures for enforcing those provisions. These special procedures are appropriate to the block grant nature of the LEAA program. They direct the administration, whenever it determines that a State or local unit of government has violated the civil rights provisions, to request the State's Governor to secure compliance. If within 60 days he has failed or refused to secure compliance, LEAA is required to begin its own enforcement procedures.

The effect of my amendment to the administration's suggested provisions is to require LEAA to first use the same enforcement procedure which applies to any other violation of LEAA regulations or statutes. That procedure of notification, hearings, and negotiations is spelled out in section 509 [Section 3757], which provides the ultimate sanction of funding cutoff if compliance is not obtained. LEAA is also authorized to undertake civil action in any appropriate U.S. district court for such relief as may be appropriate.

This amendment was necessary to reverse LEAA's traditional reliance on court proceedings to correct discrimination, rather than undertaking administrative enforcement of civil rights requirements. Despite this declared preference for judicial remedies, which is not the procedure used for any other violation of LEAA guidelines or statutes, LEAA has not initiated a single action in court and has intervened in only a limited number of cases brought by private groups. Even those interventions were begun long after the suits were filed and usually as

> a result of external pressures of court order. In effect, LEAA has had no civil rights enforcement program. The civil rights provisions in this bill give LEAA the necessary powers and require the establishment of an effective civil rights program.

This legislative history from the House was echoed in the Senate by Sen. Birch Bayh, 119 CONG. REC. 22059 (June 28, 1973):

> LEAA has also been accused of insensitivity to the constitutional rights of those its funds are spent to protect. It took over 2 years, and the persistent efforts of the Leadership Conference on Civil Rights, before LEAA recognized its responsibilities to prevent racial discrimination in the use of its funds. Throughout this period, citizens were forced to turn to the Federal courts to end discrimination by States that were receiving these Federal funds. LEAA still makes little effort to examine possible discriminatory distribution of services. Nor does the Agency give sufficient attention to privacy rights. . . .
>
> I could dwell at length on the misuse of funds, the insensitivity to constitutional rights, the bureaucratic redtape and delay that have characterized LEAA operations, but these have been well-documented through the careful and thorough investigations of the House Government Operations and Judiciary Committees, and by the report of the National Urban Coalition.

One of the reports mentioned by Sen. Bayh was the printed transcript of the LEAA hearings held by the House Judiciary Committee: *LEAA Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 93rd Cong., 1st Sess. (1973). Although these hearings were held before the introduction of Rep. Jordan's amendment, much of the testimony was directed

at the nonexistence of civil rights enforcement by LEAA. Particularly relevant are the remarks of Rep. Augustus Hawkins, *id.* at 621-23:

> Mr. Chairman, members of the Committee, as chairman of the House Equal Opportunities Subcommittee, I would like to discuss with you what I regard as a major failing of Title I of the Safe Streets Act and its administration by the Law Enforcement Assistance Administration. I am referring specifically to the failure of the LEAA to meet its affirmative obligation to insure that the funds it distributes not only do not tend to support racial and sex discrimination but also work to reduce it. This obligation stems from the Fifth and Fourteenth Amendments and is reflected in the policy underlying Title VI of the Civil Rights Act of 1964, an act which this committee authored.
>
> The LEAA has presided over the disbursement of $1 ½ billion of federal funds to the Nation's criminal justice agencies during the period of its existence. Yet, it has given only cursory recognition to the massive civil rights problems involved in the distribution of these sums. The criminal justice system is the system that deals most directly, and, frequently, most harshly with the poor and minorities. It has been often documented that each phase of the criminal justice decision making process is easily subject to discriminatory judgment and that in fact, minorities are usually treated unfairly. Nowhere is discrimination more evident than in the area of employment. In a report by the United States Commission on Civil Rights, *By All The People . . . For All the People*, it was pointed out that police departments made one of the poorest showings among state and local employers as an employer of minorities. Indeed, the continued poor performance of state and

local employers generally forced the Congress into extending the protections of Title VII of the 1964 Civil Rights Act to these employees. That the Congress was justified in this observation can be attested to by the number of complaints already before the EEOC.

Of course, the areas of discriminatory impact of the criminal justice system are broader than employment. But the problem of employment discrimination among the criminal justice agencies is the one I regard as the most serious.

It should be obvious that minority citizens cannot be expected to have respect for an institution in which they know they can never be employed, or, even if they are employed, in which they will never be permitted to rise through the ranks. Complicated civil rights problems abound in the area of law enforcement. However, I maintain that the key to solving a great many of them is in promoting equal employment. When employment of criminal justice agencies is truly reflective of the communities in which they operate, other problems will begin to resolve themselves.

The LEAA has two powerful weapons which could enable it to become a leader in the federal effort against discrimination. These are Title VI of the Civil Rights Act of 1964 and regulations promulgated pursuant to the general rule making authority of the Safe Streets Act.

Rather than welcoming its responsibilities and fully utilizing the tools available to it, the LEAA has only recently admitted that it had a civil rights responsibility. The LEAA program was in operation for almost two years before a civil rights compliance office was established or regulations issued to implement the Title VI mandate.

In July 1970, the Office of Legal Counsel of the Department of Justice (then headed by William Rehnquist) issued a legal position letter attempting to justify the the inaction of the previous two years by declaring that Title VI of the Civil Rights Act of 1964 was not applicable to employment practices of LEAA grantees and subgrantees. This position received scathing criticism from civil rights groups and from the Civil Rights Commission. On October 23, 1970, an additional opinion, from the Department of Justice's Office of Title VI, addressed to Jerris Leonard in his capacity as Assistant Attorney General for the Civil Rights Division, argued forcefully—and apparently convincingly—that LEAA programs were indeed covered by Title VI. The LEAA acquiesced and promulgated regulations implementing the law.

In late 1970, the Office of Civil Rights Compliance was established. Its director, Herbert Rice, is still at the GS-15 grade level, a level below that of other LEAA program administrators; thereby building into the LEAA structure an obstacle to civil rights input in key agency policy decisions. The office itself appears to have been the stepchild of the agency. Its staff has only recently been increased from four to eight professionals and its impact on LEAA programs does not appear to be very great. Additional compliance personnel are planned, but even these staff increases, the Civil Rights Commission maintains, would be grossly inadequate.

In its recent report, *The Federal Civil Rights Enforcement Effort, A Reassessment*, the U.S. Commission on Civil Rights notes that the LEAA's civil rights compliance program has shown some signs of improvement. However, the Commission does not have much enthusiasm for the LEAA's programs.

The Commission points out that the LEAA still does not appear to deal with complaints in an expeditious manner (more of this later) and has not performed any pre-award reviews although it has finally begun post-award reviews. But, the Commission notes that the adequacy of these reviews and of complaint investigation is unknown because the LEAA would not make reports of its investigations available to the Commission.

On December 31, 1970, the LEAA issued its equal employment regulations. On January 11, 1971, the Washington Post carried a story on these regulations pointing out that they "appear to have gone unnoticed when they were issued December 31." While one cannot attach too much importance to this, it seems strange that an agency about to embark on a major civil rights compliance effort (which was the course suggested by these regulations) would do so without public announcement.

Neither the regulations implementing Title VI nor those based on the agency's rulemaking authority provide for pre-award compliance reviews. When a review is undertaken, however, the regulations indicate a strong preference that a judicial proceeding rather than the more logical one of an administrative proceeding be used. The concern expressed in its regulations to the contrary, the agency has nevertheless funded a number of police and correctional agencies while legal proceedings were pending.

Ignoring what other agencies might regard as a golden opportunity, the LEAA has not required through its regulations that affirmative action plans, or other methods for achieving racial balance be implemented as a condition for receiving federal funds. The LEAA has defended this omission by quoting the Safe Streets Act's provision precluding

the imposition of quotas. It has apparently eluded the agency that affirmative action programs can be established without the use of quotas. Furthermore the LEAA has generally ignored problems of sex discrimination. About a year ago it issued proposed rules forbidding sex discrimination but these were not formally promulgated until just this month.

In response to a series of questions on LEAA policy submitted by Senators Hart, Kennedy, and Bayh, Jerris Leonard stated that he considers "a cutoff of LEAA funds to be a last alternative to be resorted to only when I am satisfied that it is not feasible to pursue judicial remedies or some other means of achieving civil rights compliance that will permit funding to continue in the interim. * * * I do not favor withholding of funding as a means of enforcing compliance."

Despite LEAA's declared preference for judicial remedies, it has not initiated a single action and has intervened in only a limited number of cases brought by private groups. As pointed out in a recently released report by the Lawyers Committee for Civil Rights, two of these interventions—*Morrow v. Crisler*, 4 FEP Cases 674 (D.Miss. 1971), and *Castro v. Beecher*, Civ. Action No. 70-1220 (W.D. Mass. 1971), were initiated ten months after the suits were begun and then only as a result of external pressure. In another suit—against the Alabama Highway Patrol—the Justice Department intervened only after receiving a court order to do so.

Now that the recent amendments to Title VII give the EEOC the preliminary jurisdiction over employees of state and local governments, one would expect that the LEAA would be cooperating with the EEOC to the fullest extent possible. Such is not the case however. A call to the EEOC revealed that the

only consultation which they have had with the LEAA was several months ago on the question of devising a reporting form which both agencies could use. These discussions did not lead to a mutual solution and the EEOC has not been contacted since.

As I mentioned earlier, the U.S. Civil Rights Commission has been especially critical of the LEAA's delays in resolving complaints. Let me give an example from our committee's experience.

In June of 1971, the Afro-American Patrolmens League of the city of Chicago filed a formal complaint with the LEAA charging the Chicago Police Department with purposefully and intentionally using personnel practices that discriminate against blacks and other minority group members. The charges alleged discriminatory treatment in the CPD's hiring practices and techniques, including the use of medical examinations; methods of promotion selection; efficiency ratings; disciplinary procedures; and assignments within the Department. In early 1972, the LEAA responded to this complaint by initiating a study of the CPD to determine the correctness of the allegations. The investigating team assigned to the job submitted its report in August 1972, substantiating all of the League's charges. On the basis of this report, the LEAA recommended action, but now, almost 9 months from the issuance of the report and one and a half years since the filing of the charges, the status of the Black policemen's complaints is essentially quo. The CPD has, according to Renault Robinson, President of the League, in testimony before our committee last year, ignored the requests and recommendations of the LEAA.

Conversations several weeks ago with Mr. Herbert Rice, and Congressional Liaison officers, indicated

that the LEAA's response to Chicago's action would go out in "weeks" and that I would be notified. When asked if the agency contemplated a shutoff of funds, my office was given a vague reply and told that these matters are very complex.

Mr. Robinson told me in a recent phone conversation that it was only with the greatest of effort that this organization got the LEAA to send an investigating team in the first place. Moreover, it was only as a result of continual pressure on the part of the League that the investigating team spent as much time and care on the report as it did. That such pressure was necessary to force the LEAA to do what it should have been doing all along says a good deal about the agency's commitment. It also does not make one optimistic that the LEAA will use its considerable powers to give the Black employees of the Chicago police force the remedy they deserve and to which the law says they are entitled.

I think it is noteworthy to point out here that of those investigations completed by the LEAA, the Chicago investigation report was the only one made available to the Civil Rights Commission or to my committee. I frankly fail to understand why these reports were not submitted so that an independent appraisal of their thoroughness could be made by the Commission, a body with a great deal of expertise in this area. I can only assume that their quality was embarrassingly low.

LEAA funds could be a powerful tool in the fight against discrimination, but the agency has been unwilling to move with any decisiveness. It has only reluctantly admitted its Title VI responsibilities and belatedly adopted other equal employment requirements. In the case of both sets of regulations, too

much discretion is vested in the Administrator, in this case an Administrator who does not believe in the application of administrative remedies. Furthermore, there is a lack of clearly defined objective standards as to what constitutes a violation of the equal employment obligation.

Nearly three years after the enactment of § 518(c), Congress considered and ultimately enacted another amendment authored by Rep. Jordan. This new amendment—introduced on March 9, 1976 as H.R. 12364—was favorably reported by House Judiciary Committee in H.R. REP. No. 94-1155, 94th Cong., 2d Sess. 2-5 (May 15, 1976). In it report, the Committee briefly explained the reasons for the new amendment, *id.* at 10-11:

> In 1973, the Congress adopted subsection 518(c) of title I of the Omnibus Crime Control and Safe Streets Act authored by Representative Barbara Jordan, a member of the Committee. It provides a broad prohibition against the use of LEAA funds for a discriminatory purpose or effect. The amendments provide ample authority for LEAA to initiate civil rights compliance investigations, make findings, seek voluntary compliance, temporarily suspend payments, hold administrative hearings, order corrective actions and permanently terminate payments. The response of LEAA to the 1973 civil rights amendments has been less than minimal. In December, 1975, two years and four months after the enactment of the 1973 amendments, LEAA published in the Federal Register proposed regulations to implement the 1973 amendments.
>
> LEAA has never terminated payment of funds to any recipient because of a civil rights violation. Despite positive findings of discrimination by courts and administrative agencies, LEAA has continued to fund violators of the Act.

> The Subcommittee members were assisted by Miss Jordan and guided by the testimony of a plaintiff in a civil rights discrimination lawsuit against LEAA in devising a legislative remedy to LEAA's inaction. The Committee adopted an amendment in the nature of a substitute proposed by Miss Jordan for the language in H.R. 13636 as reported by the Subcommittee.

The reasons for the new amendment were explained in a more detailed manner by Rep. Jordan and by several of her colleagues in the *LEAA Hearings Before the Subcommittee on Crime of the House Committee on the Judiciary*, 94th Cong., 2d Sess. (1976). For example, in her prepared statement submitted on March 11, 1976, Rep. Jordan explained, *id.* at 446-47:

> Mr. Chairman, members of the subcommittee, I have introduced legislation amending the civil rights section of LEAA's basic authorization. I urge this Subcommittee to incorporate my bill into its 1976 amendments.
>
> The purpose of my bill is straight forward: to assure that LEAA funds will not continue to flow to state and local law enforcement and criminal justice agencies which have been found to have discriminated, unless corrective action is taken.
>
> The reasons for my bill are equally straight forward: First, LEAA has not seen fit to implement civil rights law adopted in 1973. Second, LEAA has never, on its own, suspended payment of funds to any recipient which has been found to have engaged in discriminatory practices.
>
> In 1973, the Congress adopted subsection 518(c) of the Omnibus Crime Control and Safe Streets Act. I authored those 1973 amendments. They provide a broad prohibition against the use of LEAA funds for

a discriminatory purpose or effect. The amendments provide ample authority for LEAA to initiate civil rights compliance investigations, make findings, seek voluntary compliance, temporarily suspend payments, hold administrative hearings, order corrective actions, and permanently terminate payments. The response of LEAA to the 1973 civil rights amendments has been less than minimal. LEAA's civil rights regulations now in effect were adopted prior to the enactment of the 1973 amendments. Simply put, LEAA's civil rights regulations contravene the law.

In December, 1975, two years and four months after the enactment of the 1973 amendments, LEAA published in the Federal Register proposed regulations to implement the 1973 amendments. Since December, nothing further has emanated from LEAA.

LEAA has never terminated payment of funds to any recipient because of a civil rights violation. Despite positive findings of discrimination by courts and administrative agencies, LEAA has continued to dole out funds to the discriminators. A process of tortured reasoning and a blatant disregard of the 1973 amendments keeps the money flowing.

LEAA's reasoning can be illustrated by example. A complaint is filed alleging discrimination. At the same time the complainant files suit in either state or Federal court. LEAA reasons that pending the litigation it can do nothing. And it does nothing, except continue to pay the defendant. Later, the litigation over, the defendant has been found by the court to have discriminated. The Court orders remedies. LEAA reasons that the court ordered remedies solve the problem. LEAA continues to do nothing, except pay. Either way LEAA portends noninvolvement. Either way a clear reading of the statute is

ignored. "No person . . . shall . . . be subjected to discrimination under any program or activity funded in whole or part with funds made available under this Act."

My bill proposes a simple set of steps which must be followed by LEAA if discrimination is found to exist. The Members have before them a diagram which summarizes these steps.

Step one. If one of three things occurs, LEAA must send to the Governor a notification of presumed discrimination. The three things which would trigger the notification are: A finding of non-compliance by a federal or state court or administrative agency, the filing of a law suit by the U.S. Attorney General, or the finding of discrimination by LEAA's own investigators.

Step two. The Governor is given 60 days in which to seek voluntary compliance. If, after 60 days, voluntary compliance is not achieved or an administrative hearing has not absolved the recipient, payment of further LEAA funds would be temporarily suspended.

Step three. After suspension, the recipient has 120 days in which to request an administrative hearing. LEAA must grant the request for a hearing within 30 days of receiving the request. Payment of further LEAA funds may be terminated permanently if, after the hearing, the recipient is found to be in non-compliance. If the recipient fails to request a hearing, LEAA must make a finding based upon the record before it. Payment may resume if the recipient is found to be in compliance.

At any time during the process the recipient has access to the courts. Aggrieved citizens may file suit in federal court against alleged discriminators, and they may be awarded attorneys fees if their suit is

successful. The Attorney General is given explicit authority to file suit in federal court, independent of any action or recommendation by LEAA. Reasonable and specific time limits must be established by LEAA for dealing with complaints and for conducting independent reviews.

The steps required by my bill are similar to the steps the Department of Health, Education, and Welfare uses to implement Title VI of the Civil Rights Act of 1964. Their inclusion in the LEAA authorization will assure that if LEAA continues to ignore civil rights law, payment of funds to discriminators can be halted by action of the courts, administrative agencies or the Attorney General.

If LEAA continues to do nothing, at least my bill provides that federal money will not be spent in contravention of the civil rights prohibition. If LEAA wishes to implement the 1973 amendments, that will be fine also. Either way, my bill makes certain that the 1973 prohibition against the use of LEAA funds for a discriminatory purpose or effect will be meaningful.

LEAA has both a constitutional and a statutory responsibility to enforce civil rights law. Failure to take that responsibility seriously leads me to believe that further promises should not be taken seriously by the Congress. I am no longer willing to wait to see promises fulfilled. The law should be enforced. That is what my bill assures. To ask that an agency called the Law Enforcement Assistance Administration itself enforce the law, is not asking too much.

During her testimony, the need for the new amendment was commented on not only by Rep. Jordan, but also by Rep. Robert McClory, and by Subcommittee Chairman John Conyers, *id.* at 442-45:

Ms. JORDAN. Thank you, Mr. Chairman, and thank you, Mr. McClory, for welcoming me to this committee, and for the words which you said, which are all kind.

Mr. Chairman, and Mr. McClory, I have introduced a piece of legislation that attempts to strengthen the civil rights provisions of the Law Enforcement Assistance Administration. I would hope that this subcommittee, in proposing legislation for the continued authorization of LEAA, would put my bill in your authorizing legislation.

Mr. Chairman, it is necessary that we do something about civil rights enforcement in the Law Enforcement Assistance Administration. I am sure it is not the only agency, but it is certainly one agency with the word "Enforcement" in its title, which has declined to enforce the law.

In 1973 I proposed amendments when the LEAA authorization was in Subcommittee 5. I proposed civil rights amendments which were designed to strengthen civil rights enforcement at that time. What we wanted to do was to give the Law Enforcement Assistance Administration the early option to cut off funds if a jurisdiction was found to be discriminating. We passed the 1973 authorization law, including the civil rights amendments. The LEAA did not even promulgate regulations to carry out, to effectuate, the 1973 amendments until December of last year—I am talking about December of 1975—when they didn't promulgate regulations, they "proposed to promulgate".

We have had the 1973 amendments longer than 2 years. They have not been enforced. Regulations have not been promulgated. In December the Administration proposed to promulgate regulations and has not done so.

LEAA has not, on its own, terminated funds for any recipient who was found to be the perpetrator of discrimination. LEAA does not like to terminate funds at all because they say it is quite essential that the people in these communities continue to receive the benefits of whatever program it is. And so, consequently, the benefits keep flowing. LEAA keeps paying. And discrimination persists on the part of the recipients.

The bill which I have introduced is very simple. You probably have a diagram in front of you that will show the flow of enforcement of my bill. It is a little scheme called, "Schematic of Proposed Civil Rights Procedures".

* * * *

If LEAA does nothing at all, at least the provisions of this bill which I have introduced would provide for some remedy on the part of the recipient; some remedy on the part of that person who is discriminated against. That's what we've got to do, or the law just means absolutely nothing, as we approved it as a result of the 1973 amendments; and the whole policy of, "No Federal money shall be distributed to people, agents, which discriminate."

So, Mr. Chairman, I recommend the bill to you for your consideration as you discuss civil rights provisions and continued authorization of LEAA.

Mr. CONYERS. Thank you very much.

I think your proposal makes eminently good sense.

The consideration that arises with me is, what if the organization itself is in noncompliance, which is precisely the problem we have here. Your legislation, of 3 years ago is still in the process of being promulgated—it makes me want to find out how far along LEAA is.

We all enacted a law; everyone understood what it meant; it went on the books; the President signed it; and then it was ignored.

Now, some of us—yourself included—are getting a little tired of this. We can pass civil rights laws year in and year out, and the agency charged with the enforcement ends up being the prime noncompliant. Now, how do you get tough in Texas legislative proceedings?

Ms. JORDAN. Well, Mr. Chairman, I wish that I could apply the law of the frontier—

[Laughter.]

Ms. JORDAN. [continuing]. And go over there and mandate enforcement.

* * * *

Mr. MCCLORY. Thank you, Mr. Chairman.

Is the proposal that you make, Miss Jordan, is that consistent with another practice with regard to other legislation?

Ms. JORDAN. It is consistent in a general way with the practice applied by HEW in the enforcement of title VI.

Mr. MCCLORY. Right.

Ms. JORDAN. Now, as you know, HEW may, under title VI, try to achieve compliance in school integration matters. They, with just the threat of termination of funds, are able to resolve almost 90 percent of the disputes that occur.

So, the answer to your question is: Yes, it is certainly consistent with HEW's enforcement under title VI.

Mr. MCCLORY. Since it is already in the law that the funds should be dispensed and utilized without discrimination, the Administrator of LEAA would have authority, I assume, under existing law, to

withhold if he found administratively—he hasn't exercised that authority, has he?

Ms. JORDAN. He has the authority, but he has not chosen to exercise it at all.

Mr. MCCLORY. We don't have any mechanism.

Ms. JORDAN. That is right, we don't have any time frame.

Mr. MCCLORY. What about the city of Chicago—those funds—aren't they withholding $60 million?

Ms. JORDAN. Those are LEAA funds, the police department. But that was not LEAA action, that was court action.

Mr. MCCLORY. Right.

Ms. JORDAN. And if LEAA had acted, it might have been possible to get that situation worked out without going to court, having a decision and enforcement of the judicial decree.

Mr. MCCLORY. So, at the present time under administrative authority you can achieve the same thing as through court action.

Ms. JORDAN. It only takes longer.

Mr. MCCLORY. Of course, your suggestion involves also the possibility of court action.

Ms. JORDAN. Yes.

Mr. MCCLORY. I think that is very good.

Additional reasons for the new amendment were provided by Rep. Charles Rangel, *id.* at 606-07:

Mr. Chairman, I am grateful for the opportunity you have given me to appear before your subcommittee so that I might submit my views regarding the Law Enforcement Assistance Administration's (LEAA) civil rights compliance activities. I commend the subcommittee for taking the time out of its busy schedule to conduct hearings into the civil rights enforcement effort of LEAA, for there appears to be an urgent need to assess what in fact

that agency is doing to carry out its statutory mandate in light of the recently published adverse reports and the American Civil Liberties Union's pending litigation against LEAA. For reasons stated hereinafter, I urge the subcommittee to impose restrictions on LEAA's existing authority and make clarifications with respect to those powers.

In 1973, the Crime Control Act of 1968, under which LEAA was created, was amended (Section 518(c)) largely through the efforts of our colleague, Congresswoman Barbara Jordan, to clarify LEAA's enforcement power regarding civil rights compliance. That section requires mandatory rather than discretionary fund termination when LEAA finds that an LEAA recipient is in non-compliance with Title VI of the 1964 Civil Rights Act or the civil rights provisions of the Crime Control Act. Thus the Congress has imposed upon LEAA the most stringent statutory civil rights mandate among the federal enforcement agencies for ensuring nondiscrimination in its federal assistance programs.

However, this attempt by Congress to make clear to LEAA that it is to utilize and give preference to its administrative enforcement powers rather than its traditional reliance on judicial remedies has been blatantly disregarded. Even though the Jordan amendment has been law for more than two years, LEAA has not issued regulations which reflect a change in its existing policy preference for litigation over fund termination. A clear example of LEAA's unlawful resistance to its statutory mandate is exhibited in its response to my letter sent to that agency in January of last year regarding the civil rights activities of LEAA. One of my inquiries concerned LEAA's resolution of the complaints which it had investigated where there had been a finding

for the complainant. LEAA provided me with a summary of the actions that were taken where a finding for the complainant was made. Out of the ten cases listed, half of those ten referred to the Department of Justice for litigation while the remaining five were resolved through voluntary compliance or not resolved at all. LEAA's record in implementing the mandatory fund termination provisions of the Jordan amendment is far from good.

LEAA's unlawful regulatory preference remains in effect today. LEAA recently proposed regulations indicating a change in that policy after the ACLU initiated its suit. Those proposed regulations have not yet been adopted. Meanwhile, LEAA's refusal to utilize its enforcement powers is in effect making the federal government a party to the discrimination which pervades our criminal justice system. Our taxpayers' dollars cannot be funneled in this discriminatory manner, and I appeal to the subcommittee to initiate at the close of these hearings positive steps to address the unlawful activity of LEAA.

I recommended that Congresswoman Jordan's proposed amendment to the 1968 Crime Control Act be given immediate and favorable consideration. Her amendment addresses one of the primary issues which LEAA has taken advantage of as an excuse for delaying its enforcement powers. LEAA has refused to take action against discriminatory agencies if a suit is pending against such agencies. The Jordan amendment would in effect direct LEAA to initiate proceedings against any agency found in noncompliance, notwithstanding any litigation simultaneously pending against it. Moreover, the amendment requires the discriminatory agency to submit post-review reports stipulating the progress that has been made toward correcting its noncompliance

activity. Currently, LEAA has no mandatory post-review mechanism of the type proposed in the Jordan amendment. I have only addressed two of the solutions proposed in Congresswoman Jordan's amendment for the sake of brevity, but I wish to communicate my strong support for the amendment in its entirety.

In regard to LEAA's noncompliance with Title VI and the civil rights provisions of the Crime Control Act in general, several areas are lacking the requisite supervision and direction. Of primary concern is LEAA's major focus on the compliance activities of large recipients. While it is commendable that LEAA is attempting to utilize its resources in the most economical manner, LEAA must also concentrate its energies toward "smaller" recipients. It is often in the latter class of recipients, made up of smaller cities and rural areas, where discrimination is widespread, and if allowed to go unchecked, this has an effect just as malignant and oppressive as the discrimination practiced by the larger jurisdictions. Thus, it is not effective civil rights compliance for LEAA to concentrate its resources on the more visible recipients of its funds to the detriment of those who suffer equally from the discriminatory patterns of those agencies receiving a lesser amount of federal assistance.

LEAA's complaints of insufficient civil rights compliance staff is indeed a problem that many federally funded programs share. However, LEAA has not utilized the abundant resources available. LEAA has contracted with outside specialists to assist the State Planning Agencies (SPAs) in its development of technical assistance for civil rights training of personnel. Certainly, LEAA's workload could be drastically reduced if it were to require that

the SPA's themselves conduct pre-award and post-award compliance reviews in addition to complaint investigations. There is evidence that some of the SPAs have taken it upon themselves to assume this function. However, LEAA does not demand that the SPAs do so, nor does LEAA give full faith and credit to those SPA findings. Rather, LEAA causes delay in the implementation of compliance activity by requiring its approval before SPAs can undertake enforcement action. If LEAA were to issue standards by which the capabilities of the SPAs might be assessed, duplication and delay could be avoided. Currently, no such standards have been employed.

LEAA is deficient in a great many other areas of its civil rights compliance activities. As a result of its inaction to correct those problems, it is clear that further legislative action is required to reemphasize our determination in the Congress that the Law Enforcement Assistance Administration implement an effective compliance program to prevent discrimination in federally-funded criminal justice-related activity. The new Jordan amendment should be considered and acted upon by this subcommittee to provide this congressional response.

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In the Supreme Court of the United States

OCTOBER TERM, 1981

RICHARD W. VELDE, ET AL., PETITIONERS

v.

NATIONAL BLACK POLICE ASSOCIATION, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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A. Respondents have sued former Attorney General Levi, former LEAA Administrator Velde, and two former subordinate LEAA officials for $20 million in compensatory and punitive damages because, in respondents' view, these officials did not take adequate steps to enforce the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968. Specifically, respondents challenge petitioners' failure to initiate fund termination proceedings against certain LEAA grantees. We contended in our opening brief that petitioners are absolutely immune from personal damages li-

ability based on these actions, relying on this Court's holding in *Butz* v. *Economou*, 438 U.S. 478, 515 (1978):

> We also believe that agency officials performing certain functions analogous to those of a prosecutor should be able to claim absolute immunity with respect to such acts. The decision to initiate administrative proceedings against an individual or corporation is very much like the prosecutor's decision to initiate or move forward with a criminal prosecution. An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought. * * *
>
> The discretion which executive officials exercise with respect to the initiation of administrative proceedings might be distorted if their immunity from damages arising from that decision was less than complete.

Respondents have offered three principal reasons why petitioners are not entitled to absolute immunity from personal damages liability for their enforcement decisions.[1] First, respondents contend that this lawsuit "was not brought by a single disgruntled corporate official complaining [of] an individual administrative enforcement proceeding" (Br. 15) but rather challenges a "consistent policy and practice that bore no relation to individualized decisionmaking" (Br. 4) and "a wholesale refusal to exercise *any* of the meaningful enforcement tools available to [petitioners]" (Br. 15). Second, respondents as-

[1] Indeed, respondents' contentions go beyond the denial of absolute immunity. According to respondents (Br. 29), "petitioners here should be barred from claiming entitlement to any immunity whatsoever."

sert (Br. 29) that absolute immunity is intended "to encourage public officials to act, not to encourage them not to decide or not to act at all." Finally, respondents claim (Br. 17) that petitioners lacked any discretion in carrying out their statutory enforcement responsibilities.

1. We note at the outset that respondents' characterization of their claims is not borne out by the complaint or the record. The complaint details petitioners' extensive efforts to secure compliance with the governing anti-discrimination laws (J.A. 27, 28, 34-38, 41). The Velde Affidavit also explains petitioners' numerous attempts to assure that recipients of LEAA funds did not discriminate (J.A. 237-243; see also J.A. 294, 302). A fair reading of the prolix complaint is that respondents seek to hold petitioners liable in damages not for an across-the-board failure to act but for selecting one approach to civil rights compliance that emphasized voluntary resolution rather than another approach that sought to terminate funding at the earliest opportunity in every case. Similarly, respondents are incorrect in suggesting (Br. 22-23) that petitioners' failure to employ fund termination proceedings was the result of a rigid and unyielding policy rather than the exercise of discretion. The regulation that expressed the policy about which respondents complain, 28 C.F.R. 42.206 (a) (1973), did not expressly *preclude* fund termination proceedings, but instead indicated a *preference* for judicial proceedings when "the responsible Department official determines that judicial proceedings * * * are as likely or more likely to result in compliance than administrative proceedings * * *."

The more basic objection to respondents' arguments, however, is that they reflect a fundamental

misunderstanding of the absolute immunity defense and of the law enforcement process. Administrative enforcement officers, like prosecutors, are "duty bound to exercise [their] best judgment both in deciding which suits to bring and in conducting them in court." *Imbler* v. *Pachtman*, 424 U.S. 409, 424 (1976). Absolute immunity from personal damages liability is essential to protect the public interest, because "agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment." *Butz* v. *Economou*, *supra*, 438 U.S. at 516. "The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages." *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 424-425. As we pointed out in our opening brief (at 15-16, 24-25), the decision whether to bring a particular criminal or administrative proceeding, or which enforcement technique to pursue, often involves the application of a broad policy directive that extends more widely than a particular case. See, *e.g.*, *Thompson* v. *United States*, 444 U.S. 248, 250 (1980). *Rinaldi* v. *United States*, 434 U.S. 22, 24 n.5 (1977); *Redmond* v. *United States*, 384 U.S. 264, 265 (1966). Similarly, administrative and criminal law enforcement officials often decide not to initiate an enforcement proceeding, either in a particular instance or in a class of cases. Decisions of this kind are essential to the prosecutorial function. A rule that refused to extend absolute immunity to these situations would be wholly unresponsive to the concerns that prompted the decisions in *Imbler* and *Economou* and would skew the law

enforcement process. Respondents have offered no response to these arguments.[2]

2. Respondents contend (Br. 17-21) that petitioners are not entitled to absolute immunity from damages liability because they had no discretion in implementing the anti-discrimination provisions of the Act. We have already addressed this point in our opening brief (at 18-24). We note, however, that respondents assert only that "petitioners enjoyed

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[2] Respondents' rebuttal consists of two misstatements. First, they claim that our position would "swallow up the ruling in *Butz* * * * by renaming all of the administrators within LEAA's hierarchy who had any connection with its civil rights enforcement activities as 'prosecutors' " (Br. 14). We do not here challenge the general rule that Executive Branch officials normally are entitled only to a qualified immunity from damages liability. But when damages are sought from executive officials for their failure to impose governmental sanctions, particularly when those sanctions may be imposed only through formal enforcement proceedings, including notice and a hearing followed by judicial review (see 42 U.S.C. (1970 ed., Supp. V) 3757-3759), liability is predicated upon their action (or inaction) as administrative prosecutors, and they are entitled to absolute immunity under *Butz* v. *Economou*, *supra*, 438 U.S. at 515.

Second, respondents insinuate (Br. 26 n.28) that this Court limited its ruling in *Economou* to administrative or prosecutorial decisions *to bring charges*. The statement in *Economou* quoted by respondents obviously was intended to mean not that absolute immunity is unavailable for an administrative decision not to institute a proceeding, but only that persons complaining of such a decision face a variety of obstacles that ordinarily would make absolute immunity unnecessary as a protection against retaliatory lawsuits—obstacles of precisely the kind faced by respondents here (*e.g.*, no cause of action, no damages related to challenged government conduct). See *Leeke* v. *Timmerman*, No. 80-2077 (Nov. 16, 1981); *Linda R.S.* v. *Richard D.*, 410 U.S. 614 (1973).

no discretion *once they determined that a grantee was not in compliance* with the nondiscrimination requirement in § 518(c)(1) of the Act" (Br. 17; emphasis added). That determination, of course, required the exercise of discretion. Moreover, even this concession by respondents does not accurately portray the statutory scheme, because funding termination could be predicated only on an administrative finding of "substantial" noncompliance and could be instituted only after affording the state chief executive "a reasonable time" to secure compliance (42 U.S.C. (1970 ed., Supp. V) 3757). It also bears repeating that Congress amended Sections 509 and 518 in 1976, after the events alleged in respondents' complaint had occurred, precisely because it thought that LEAA retained too much discretionary authority in this area. See, *e.g.*, H.R. Rep. No. 94-1155, 94th Cong., 2d Sess. 11, 25-27 (1976); 122 Cong. Rec. 28498 (1976) (remarks of Rep. McClory).[3]

3. Finally, respondents argue that petitioners should be denied absolute immunity because they did not describe themselves as "prosecutors" in their affidavits (Br. 15, 23-24), because of the purported

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[3] Respondents appear to imply (Br. 21) that absolute immunity is not available here because the Act authorizes imposition of only one sanction in a formal fund termination proceeding and does not authorize any civil penalty. The discretion involved in deciding whether to seek imposition of a fixed sanction is equally deserving of protection from extraneous influences (such as the fear of personal damages liability) as the discretion involved in deciding how large a fine should be imposed. Indeed, respondents' argument suggests that petitioners would not be absolutely immune from a suit by an aggrieved grantee seeking damages for an unsuccessful attempt to terminate funding after the required notice and hearing. This is plainly wrong.

"absence of adversarial checks" (Br. 26-27), and because otherwise respondents would have no "avenue of redress" (Br. 28). These contentions may be disposed of quickly.

It is irrelevant that petitioners' affidavits in the district court did not use the label "prosecutor" to describe their functions. The Court in *Economou* (438 U.S. at 515) remarked that agency officials often "perform[] certain functions analogous to those of a prosecutor," not that they are prosecutors in the criminal law enforcement sense. The essential consideration under *Economou* is "the special nature of [the officials'] responsibilities" (*id.* at 511), not the title given to their office. We have described in our opening brief (at 25-28) the roles of the various petitioners with regard to LEAA's funding termination responsibilities. Petitioner Rice was in charge of day-to-day compliance efforts and was plainly acting as a prosecutor, in the sense that the word "prosecutor" is used in *Economou* to identify the official who decides what proceedings to institute and when and how to conduct them (J.A. 245, 262-264). The other petitioners, up the chain of command, had broad supervisory and final decision-making authority over decisions to initiate enforcement actions, much like the role performed by the Attorney General or a United States Attorney in a typical criminal case (J.A. 236-243, 247-249, 253-254). There can be no doubt that these officials, to the extent that their actions are brought into question by respondents' complaint,[4] were performing

[4] One of the difficulties in grappling with respondents' objections to the lack of specificity in petitioners' affidavits is that respondents' complaint, which covers 34 pages and 112 paragraphs in the joint appendix, nowhere charges any spe-

roles "functionally comparable" to that of a prosecutor. *Butz* v. *Economou*, *supra*, 438 U.S. at 513. See also *Imbler* v. *Pachtman*, *supra*, 424 U.S. at 423 n.20.

Moreover, respondents' reference to the "absence of adversarial checks" and the need for an "avenue of redress" is both factually and legally inaccurate. "Adversarial checks" obviously are designed to protect those against whom a government proceeding is initiated, not to protect persons who wish to see such a proceeding initiated but who are disappointed in their desires. Here, of course, there were procedural protections available to recipients of LEAA funds against whom the Department of Justice might have chosen to proceed as a consequence of a finding of

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cific petitioner with any specific action that allegedly damaged respondents and violated their constitutional rights. Rather, the complaint is essentially a blunderbuss attack on LEAA's enforcement policies during a span of several years and names the petitioners as defendants on the assumption that they, as the LEAA chain of command, must have been responsible for the formulation and implementation of those policies.

The crucial point is that respondents are seeking damages from these petitioners for their failure to terminate funding to allegedly discriminating grantees, a sanction that could be sought only after a discretionary determination that the sanction was justified (both as a matter of law and as a matter of allocating scarce prosecutorial resources) and that could be imposed only after formal notice and a hearing. 42 U.S.C. (1970 ed., Supp. V) 3757. To the extent that the individual petitioners were personally involved in the process that led to the decision to exhaust other remedies before resorting to termination in any particular case, they are entitled to prosecutorial immunity. (Contrary to the cases cited by respondents (Br. 27 n.29), these actions were not taken in an "investigative" or "administrative" role). To the extent that the individual petitioners were not involved in that process, they cannot be held liable for the wrong alleged.

substantial noncompliance with the Act. The analogy to criminal prosecutions is apt. There are no "adversarial checks" to protect victims of crime; that does not mean that a prosecutor may be sued for damages by a victim for a decision not to prosecute.

In any event, respondents did have access to a number of avenues of relief other than a *Bivens* action for damages. They challenged petitioners' conduct under the Administrative Procedure Act (a challenge that is still pending), and they complained to Congress that the Executive Branch was not being sufficiently forceful in its enforcement activities. Indeed, after respondents complained to Congress in 1976 (see *Law Enforcement Assistance Administration: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 94th Cong., 2d Sess., Pt. 1, 491-516), the Act was amended.

B. Respondents respond to our claim that the complaint failed to charge a violation of the Fifth Amendment by stating that we have "misinterpret[ed] the nature of the constitutional violation alleged by the" complaint (Br. 34-35). According to respondents (Br. 36), "the constitutional violations alleged here occurred not when discrimination was practiced by local recipients, but when the federal officials knowingly provided financial assistance which supported the race- and sex-based discrimination." [5]

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[5] Respondents criticize the petitioners (Br. 30-32 n.32) for failing to cite or discuss cases such as *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), *Davis* v. *Passman*, 442 U.S. 228 (1979), and *Carlson* v. *Green*, 446 U.S. 14 (1980). Respondents thus confuse the question of whether the Constitution has been violated (the issue in this case) with the wholly separate question whether a damages action should be implied by the courts to remedy a constitutional violation (the issue involved in *Bivens*, *Davis*, and *Carlson*). The *Carlson* analysis, which respondents explore at great

This Court has never held, however, that the mere knowing provision of funds to an entity that discriminates is a violation of the Constitution's equal protection guarantees. Rather, for respondents to establish a violation under the Due Process Clause, they must allege facts to show that petitioners' failure to terminate funding to the allegedly discriminating state agencies had the purpose and effect of significantly facilitating, supporting or reinforcing the discriminatory behavior. See *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U.S. 256, 279 (1979); *Washington* v. *Davis*, 426 U.S. 229, 239-244 (1976). See also *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 384 n.3 (1978) (opinion of White, J.).[6]

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length, is simply irrelevant here: petitioners contend in this Court that their conduct did not violate respondents' Fifth Amendment rights, not that a violation (if proved) cannot be the subject of a damages action.

Respondents also mislead the Court in asserting (Br. 32 n.32) that the court of appeals has held that respondents have an express cause of action for damages under the Omnibus Crime Control Act. The sole authority cited by respondents is a footnote in the court of appeals' opinion (Pet. App. 7a n.16) that is addressed to the issue of respondents' *standing*. The court of appeals did not even purport to apply the analysis set forth in *Cort* v. *Ash*, 422 U.S. 66 (1975), for determining whether Congress intended to allow plaintiffs such as respondents to bring suit for damages against LEAA officials based on allegations such as those in respondents' complaint. Respondents' claims in this Court thus rest on the Fifth Amendment alone.

[6] Several of the decisions cited by respondents as "reaffirming the *constitutional* principle that government agencies may not provide funding to recipients which are known to practice discrimination" (Br. 35-36 n.35; emphasis added) involve declaratory or injunctive relief for violation of statutory or

Norwood v. *Harrison*, 413 U.S. 455 (1973), and *Gilmore* v. *City of Montgomery*, 417 U.S. 556 (1974), are not to the contrary. Initially, it should be noted that both of these cases (which involved requests for injunctions rather than damages) were decided prior to *Washington* v *Davis*, *supra*. In addition, these cases arose in the context of state and municipal programs in Mississippi and Alabama that "benefited private schools engaging in racially discriminatory admissions practices following judicial decrees desegregating public school systems." *Flagg Brothers, Inc.* v. *Brooks*, 436 U.S. 149, 163 (1978). See also *Gilmore* v. *City of Montgomery*, *supra*, 417 U.S. at 568, 570-571 n.10. Even in those situations this Court required more than mere knowing support to discriminating third parties to establish a constitutional violation. The record in those cases reflected a policy of "tangible financial aid" that had "a significant tendency to facilitate, reinforce and support private discrimination." *Norwood* v. *Harrison*, *supra*, 413 U.S. at 466. See *Regents of the University of California* v. *Bakke*, *supra*, 438 U.S. at 384 n.3.

Respondents' factual allegations are inadequate under this standard. Respondents fail to allege facts that show that petitioners purposefully encouraged, facilitated or significantly supported discriminatory

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administrative provisions. *Legal Aid Society of Alameda County* v. *Brennan*, 608 F.2d 1319 (9th Cir. 1979), cert. denied, 447 U.S. 921 (1980) (violation of Department of Labor regulations issued pursuant to an Executive Order); *Committee for Full Employment* v. *Blumenthal*, 606 F.2d 1062 (D.C. Cir. 1979) (violation of the Revenue Sharing Act of 1976, 31 U.S.C. 1242(a)); *Adams* v. *Richardson*, 480 F.2d 1159 (D.C. Cir. 1973) (violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d). These cases did not purport to find any constitutional violation from the mere provision of a financial benefit.

behavior. Indeed, as we showed in our opening brief, the complaint indicates petitioners' extensive efforts, although perhaps in respondents' view inadequate and ineffective, to promote nondiscrimination. The mere contention that petitioners' failure to terminate funding "has served to * * * perpetuate" discrimination (J.A. 26) is insufficient to allege a constitutional violation.[7]

The theory of respondents' case leads to several anomalous results. If LEAA's mere failure to terminate funding to allegedly discriminating police departments amounts to a constitutional equal protection violation, then presumably so would the enactment of a statute by Congress or a state legislature appropriating funds for that law enforcement agency. This would be so even if Congress or the state legislature (like petitioners) had no intent to further the discrimination and, indeed, took steps to end it. This theory, of course, is directly contrary to the Court's holding in *Feeney* (442 U.S. at 279). Moreover, by repeatedly asserting (Br. 36, 39) that their injuries here are attributable *not* to the discrimination practiced by the local police departments but to

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[7] Unlike in *Norwood*, there was not even an allegation by respondents of a policy on the part of the federal government to support discriminatory behavior by police departments. Petitioners never took the position that it was permissible for grantee law enforcement agencies to discriminate. The only question was how best to bring funded agencies into compliance with the LEAA anti-discrimination guarantee (see J.A. 294, 298, 302).

Indeed, it is not clear from respondents' prolix complaint and accompanying materials that they have even alleged purposeful discrimination (as opposed to discriminatory effect) on the part of the grantee police departments. If the grantees' discrimination did not amount to a constitutional violation, then petitioners' actions plainly could not have violated respondents' Fifth Amendment rights.

petitioners' failure to enforce the Act by terminating funding, respondents are attempting to turn petitioners' alleged failure to satisfy their *statutory* obligations into a *constitutional* violation.[8]

In fact, because respondents claim to have been damaged by petitioners' actions *even if those actions had no effect on the discrimination allegedly practiced by LEAA grantees* (see Resp. Br. 36 & n.36, 39)[9]

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[8] It is not easy to grasp respondents' elusive Fifth Amendment theory, because respondents repeatedly refer to petitioners' "refusals to carry out their *constitutional and statutory* civil rights obligations" (Br. 39; emphasis added). If the Act did not contain an express fund termination provision, would respondents claim that petitioners nonetheless were under a constitutional obligation not to provide federal funds to grantees known to be practicing discrimination and that the refusal to fulfill that obligation violated respondents' Fifth Amendment rights? If the answer to that question is yes, then the statutory provision is irrelevant to this case. And if the answer to that question is no, then respondents (as mentioned in the text) are attempting to turn a statutory violation into a constitutional one.

[9] Respondents clearly describe their injury as "petitioners' refusal to carry out their constitutional and statutory civil rights obligations" (Br. 39; see also Br. 37 n.36). Respondents also claim that this is a constitutional injury wholly separate from the injury caused by the discrimination allegedly engaged in by LEAA grantees (Br. 36)—injury for which express statutory make-whole remedies are available against the grantees (see Pet. Br. 38-39)—and that they are entitled to damages from petitioners without even having to show that if petitioners had taken the actions respondents preferred the discrimination would not have occurred: "the petitioner government officials caused the injuries which respondents assert as the basis for their claim against *petitioners*; * * * the relief sought by respondents would remedy and compensate for the injuries caused by *petitioners'* transgressions: * * *

the fact that racial and sexual discrimination is involved here is really coincidental. Respondents' position (see Br. 12, 36-40) essentially is that, if the federal government does not prevent or prosecute a violation of the Constitution or federal law, persons aggrieved by the Executive Branch action should be able to sue the officials involved for a violation of constitutional rights. The Executive Branch has a duty to enforce the law, and respondents seem to believe that any deficiencies in the performance of that duty subject the officials involved to constitutional tort liability. This Court should reject that startling proposition.

C. Respondents contend that petitioners are not entitled to qualified immunity as a matter of law because (Br. 44) "respondents complained of petitioners' deliberate, willful and malicious refusal to carry out an effective civil rights enforcement program, in every respect" and because respondents disputed many of the allegations in petitioners' affidavits but were not allowed to engage in discovery to substantiate their beliefs.[10] The flaw in respondents'

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damages to redress petitioners' past violations" (Resp. Br. 39-40; emphasis in original).

We note in this regard that respondents' brief repeatedly attempts to rewrite the complaint to charge petitioners with "a wholesale refusal to exercise *any* of the meaningful enforcement tools available to them" (Resp. Br. 15). The complaint, however, clearly describes the "Nature of [Respondents'] Claim" as petitioners' decision to award federal funds to various grantees (J.A. 13), and the *only* injury alleged by each of the respondents is petitioners' "refusal to terminate LEAA funding" to these grantees (J.A. 14-15).

[10] Respondents do not seriously dispute our statement (Pet. Br. 40) that petitioners had no reason to know in 1974 and 1975 that their conduct violated respondents' "clearly estab-

argument is the assumption that the liberal rules of pleading and discovery that govern normal civil litigation apply with equal force in *Bivens* actions for damages against federal officials. To the contrary, this Court admonished the lower courts in *Butz* v. *Economou*, *supra*, 438 U.S. at 507-508 (citation and footnote omitted), that more stringent rules are to apply:

> Insubstantial lawsuits can be quickly terminated by federal courts alert to the possibilities of artful pleading. Unless the complaint states a compensable claim for relief under the Federal Constitution, it should not survive a motion to dismiss. Moreover, the Court recognized in *Scheuer* [v. *Rhodes*, 416 U.S. 232 (1974)] that damages suits concerning constitutional violations need not proceed to trial, but can be terminated on a properly supported motion for summary judgment based on the defense of immunity. * * * In responding to such a motion, plaintiffs may not play dog in the manger; and firm application of the Federal Rules of Civil Procedure will ensure that federal officials are not harassed by frivolous lawsuits.

These principles strongly support the conclusion that this case should not have progressed beyond the pleading stage.

Respondents repeatedly refer (Br. 9, 15, 44, 48-50) to genuinely disputed issues of fact and to petitioners' failure to undertake any enforcement measures against grantees known to have practiced discrimi-

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lished" Fifth Amendment rights. See *Wood* v. *Strickland*, 420 U.S. 308, 322 (1975). Indeed, in February 1976 the Attorney General stated that "neither the Act nor policy of the Department of Justice encourages the termination of federal assistance without recourse to voluntary means" (J.A. 248).

nation, but they offer no facts to support their claims that these issues are disputed. Respondents also repeatedly disparage the petitioners' Statement of Reasons and affidavits in the record, but they do not offer any specific facts to rebut petitioners' material submissions. Respondents' complaint does include a boilerplate allegation—in the "Prayer for Relief" rather than the "Statement of the Claim" section of the complaint—that petitioners' actions were "willful and malicious" (J.A. 44), but this crucial charge, again, is not supported by anything other than innuendo and speculation. The complaint contains not a single factual assertion that would tend to prove willfulness or malice. And this is the sole explanation that respondents offer in their brief for the allegation that petitioners acted willfully and maliciously (Br. 33):

> Based upon their own experiences and contacts with the petitioners, respondents had every reason to believe that petitioners' conduct was "willful and malicious," and so they alleged.

We submit that these sorts of easily-made allegations, unsupported by specific facts, should not be enough to require federal officials (including, as in this case, the former Attorney General) to undergo a trial. Plaintiffs in *Bivens* actions should not be permitted to allege essential elements such as willfulness and malice without any elaboration, in the hope that they might be able to elicit evidence helpful to their case in depositions and discovery. To "ensure that federal officials are not harassed by frivolous lawsuits" (*Butz* v. *Economou*, *supra*, 438 U.S. at 508), complaints such as respondents' should be quickly dismissed.

For the reasons stated above and in our opening brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

REX E. LEE
Solicitor General

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